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NUCLEAR REGULATORY COMMISSION

Title: Georgia Power Company: Vogtle Electric
Generating Plant: Unit 1 and Unit 2

Docket Number: 50-424-OLA-3; 50-425-OLA-3
ASLBP No.: 93-671-01-OLA-3

Location: Rockville, Maryland

Date: Wednesday, September 27, 1995

Work Order No.: NRC-322

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

HEARING

-----X

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

-----X 93-671-01-OLA-3

Wednesday, September 27, 1995
Hearing Room T 3B45
Two White Flint North
11545 Rockville Pike
Rockville, Maryland

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 a.m.

BEFORE:

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

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I N D E X

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>BOARD</u>
1						
2						
3	DAVID B. MATTHEWS					
4	DARL S. HOOD					
5	PIERCE H. SKINNER		15114	15167	15199	15108
6			15237	15178	15206	15115
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19	ROY P. ZIMMERMAN					
20	LUIS A. REYES		15248	15256		15257
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E X H I B I T S

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>IDENT</u>	<u>REC'D</u>
GPC II-202	2-1-95, LETTER, MCCOY	15124	15129
GPC II-203	2-1-95, LETTER, BOCKHOLD	15124	15129
GPC II-204	12-10-90, LETTER, HAIRSTON	15148	15177
GPC II-204	BOUND FOLLOWING PAGE 15166		
GPC II-205	11-25-91, LETTER, EBNETER	15149	
INT II-270	PREVIOUSLY IDENTIFIED		15212
STAFF II-52	QUALIFICATIONS ZIMMERMAN	15250	15256
STAFF II-53	QUALIFICATIONS REYES	15250	15256
STAFF II-52 & 53	BOUND FOLLOWING PAGE 15256		

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P R O C E E D I N G S

9:58 A.M.

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CHAIRMAN BLOCH: Good morning. I remind the witnesses that they continue to be sworn, and welcome back to the next day of this proceeding, presumably the last day you serve as witnesses.

MR. MATTHEWS: Is that a promise?

CHAIRMAN BLOCH: No.

Mr. Kohn? Oh, it's up to Mr. Blake.

Whereupon,

PIERCE H. SKINNER

DARL S. HOOD

DAVID B. MATTHEWS

having been previously duly sworn, were recalled as witnesses herein, and were examined and testified further as follows:

MR. MATTHEWS: Mr. Blake, if I could, on reflection on yesterday's testimony --

MR. BLAKE: Is this your own reflection you're about to report and no discussions with anybody else?

MR. MATTHEWS: No, this is reflection among my staff that's assisting me here today.

There are four areas that I feel the record could benefit by additional discussion and additional context in areas raised not only by Mr. Kohn, but by

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1 yourself. And I'd like to go ahead and do that. By way
2 of --

3 MR. BLAKE: I don't think I have a chance to
4 say no.

5 MR. MATTHEWS: By way of reason, I'd like to
6 point out a couple of things. One, yesterday, all of
7 these areas, I think, deserve additional information on
8 the record to clarify them, if not correct them. Upon
9 reflection, somewhat more of myself than maybe the others,
10 the reasons possibly for this need for clarification stem
11 from two things. One, these all occurred late in the
12 afternoon yesterday and I for one and I think I heard
13 similar comments by my colleagues, after 3 o'clock, we had
14 a collegial headache. Unlike your offer to other
15 witnesses, I don't recall you offering to us any time we
16 felt tired we could take a recess, although I knew that
17 was something that we were probably able to do. I thought
18 maybe it was because you thought maybe the staff was
19 heartier than the other witnesses, but anyway, I think if
20 that were to happen again today, I probably would raise my
21 hand and request that we recess for a period of time.

22 The other reason behind this need for
23 clarification stems from -- and I will take responsibility
24 for this. Yesterday, I confined my remarks for the most
25 part consistent with the philosophy that's been expressed

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1 before in this hearing to answer the direct question
2 that's asked and that is contrary to my personal style.
3 I'm one who likes to provide the context for my answers
4 and I think I limited it unnecessarily yesterday, and I
5 don't intend to do that today. I believe the record in
6 this hearing is significant enough that it deserves my
7 views and those of my colleagues, even though they may not
8 be directly an answer to the question. I think the
9 elaboration is necessary. So that's what some of this is
10 about.

11 The first time, I'm going to have four items
12 to discuss, the first one is I think, Mr. Kohn, that your
13 demeanor in response to my answers and the answers of my
14 colleagues yesterday to this question about the Vogtle
15 coordinating group and their treatment of willful
16 indicated to me that maybe you didn't understand just how
17 that term was used in the nature of our deliberations.
18 Certainly, what we were about was making determinations
19 about willfulness as it's generally referred to in this
20 agency. I was giving you a very literal answer that the
21 term itself, willful, was not a term that was used in
22 those deliberations. The terms that were used in those
23 deliberations were terms that have a more exact meaning,
24 at least to us, and I believe the members of our counsel
25 staff, that is, the range of willful actions that go from

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1 careless disregard to deliberate intent and because the
2 Office of Investigations made determinations in those
3 areas, we were asked to make similar determinations,
4 namely, not similar in regard to being the same as OI, but
5 we were asked to make a determination of wrong doing and
6 willfulness and the terms that are used to interpret the
7 results of our deliberations were terms, careless
8 disregard and deliberate intent.

9 There is another level of action below that
10 which doesn't fall in the close willful area, as I
11 understand it, that we generally refer to as failure to
12 exercise reasonable care. So I didn't want to leave the
13 impression, either on the record or to you, that we were
14 not about determinations regarding willfulness. We were.
15 It's just that term didn't have sufficient precision for
16 us to find any utility in using.

17 Secondly, in response to other questioning, I
18 believe with regard to what's generally referred to as the
19 OI memo or the OI analysis of the reply by Georgia Power
20 and others to proposed civil penalties that was issued by
21 the NRC in May, there seem to be some confusion and I'll
22 make reference to it specifically. It's the October 28,
23 1994 memo from Jim Fitzgerald, as acting director of OI,
24 to James Milhoan. The reason that memo was sent --

25

BOARD EXAMINATION

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1 ADMINISTRATIVE JUDGE MURPHY: Excuse me. It
2 was the October 28th memo from Mr. Robinson?

3 MR. MATTHEWS: I'm sorry, it was and I was
4 reading the through line.

5 ADMINISTRATIVE JUDGE MURPHY: Intervenor 271?

6 MR. MATTHEWS: I don't have that exhibit
7 number.

8 MR. HOOD: I believe you mentioned 271.

9 ADMINISTRATIVE JUDGE MURPHY: Thank you.

10 MR. MATTHEWS: That memo I would view as being
11 best phrased as a companion piece to our analysis. We
12 were asked in a memorandum from Mr. Milhoan and I say "we"
13 meaning the Office of Nuclear Regulation, as was the
14 Office of Investigations to provide what I'll refer to as
15 independent, whether that word was used in a memo, I don't
16 know, but basically to provide a review of the Georgia
17 Power and others reply to the NOV and proposed civil
18 penalty. Those replies were to be used in subsequent
19 deliberations by the Agency in determining what final
20 action to take in this matter. They were developed
21 independently and they were forwarded to the Office of
22 Enforcement for their consideration, separately, in making
23 a determination of what the next step the Agency ought to
24 take in this case.

25 So there was never any expectation, nor stated

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1 desire on the part of my management for the Vogtle
2 coordinating group to in any way factor in or assess or
3 review the OI views in this case. They were offered to
4 management as were ours for consideration. So that's the
5 character of that memo.

6 MEMBER STEINDLER: I believe the specific
7 questions we had went to whether or not there was an
8 opportunity for us to do that and that goes to the
9 question of timing and what tasks were completed and we
10 did answer those questions, but it does seem to be an
11 inference on the records that perhaps we were to do that
12 because it was an opportunity.

13 MR. MATTHEWS: Or that somehow we didn't
14 complete our task because we failed to review it and
15 factor it into our deliberation and that's what I wanted
16 to correct.

17 I had two other matters and Mr. Blake, these
18 were prompted by questions from you. One, with regard to
19 the issue of air quality and this clarification is
20 prompted by, I think, some confusion on many people's
21 part, but certainly on ours for a period of time.

22 With regard to the fact that the record in
23 this case has provided information that has been reviewed
24 and is available to the people on this panel which was not
25 in the hands of the NRC or was not reviewed by either the

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1 Vogtle coordinating group or the Office of Enforcement or
2 any other portions of the NRC staff before the issuance of
3 the notice of violation, in this case, I'm talking about
4 the modified notice of violation. And the clarification
5 I'd like to state once again is based on the review of the
6 record and the information that is now available to us,
7 okay, we have drawn a conclusion with regard to the
8 statement in the April 9th letter regarding air quality and
9 that conclusion is that the statement in our view is
10 incomplete. And that a fair reading of that statement
11 which refers to initial reports would include reports
12 which at the time that the initial findings were made by
13 the NRC we were not aware of, namely, initial reports that
14 occurred contemporaneous or closely preceding the April
15 9th meeting, namely, those reports in early April of
16 higher than expected dew point readings. So we think a
17 fair reading of that statement in the April 9th letter is
18 initial reports would include those reports. Further, we
19 know that several of those reports were a result of high
20 dew point readings attributable to faulty instrumentation
21 and we now know particularly with respect to recent
22 information that Mr. Bockhold provided in his testimony
23 that it was also his belief that there were failures or I
24 should say an inability to use the instruments that
25 contributed to some of those readings. So in that regard

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1 we viewed the statements to be incomplete.

2 With regard to the relationship between that
3 determination which this staff has made and the record as
4 it stands with regard to the enforcement action, and the
5 withdrawal of violation B, it would be beyond my authority
6 to make a statement in that regard. That's a
7 determination that is rightfully held by the Office of
8 Enforcement in concert with the other managers of the NRC
9 to determine the consequences of. But I want to make it
10 clear that our comments and the conclusions that this
11 panel arrived at was based upon information available to
12 us during the course of this hearing and we wanted to make
13 sure that our testimony wasn't misconstrued to say that we
14 still viewed everything to be as it was when we last made
15 a pronouncement on this issue.

16 The last comment I'd like to make and I think
17 this is by way of an elaboration, you asked me a question
18 with regard to the meeting that I had with Mr. Taylor and
19 it being prompted, as you put it, and I restated it in
20 terms of requested by me, and upon further consideration
21 of that meeting, I wanted to make another point and it was
22 prompted by your question with regard to whether or not
23 Mr. Taylor and my agency was responsive to my concerns.
24 Yes, they were responsive and furthermore, I wanted to
25 share the view although there may be hesitancy when

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1 somebody has an issue of major importance to take a stand,
2 as it were, I know the expectations that my management has
3 up to and including Jim Taylor and if it were to have come
4 to light that I had these reservations or concerns about
5 performance in Vogtle and at this juncture had expressed
6 them among the staff that had failed to bring them to his
7 attention, I can't even describe the word that would
8 probably accurately refer to his reaction to finding that
9 out. I know for one thing he would be professionally
10 disappointed in me and because I have a working
11 relationship and a long-standing one with him, I think he
12 would have been personally seriously disappointed with me
13 if I had not brought these concerns to his attention and I
14 think that's also what prompted the agency's immediate
15 assignment of both myself and Mr. Riez to the job of
16 getting this fixed, which I had a great deal of the
17 resources of the Nuclear Regulation and I would venture to
18 say you can ask Mr. Riez this, the resources of Region 2
19 put at our disposal to insure that these issues got
20 addressed and got addressed promptly, so I wanted to add
21 that clarification this morning.

22 MR. BLAKE: Do the other two want to add
23 anything more?

24 MR. SKINNER: No, he adequately expressed it.

25 MR. HOOD: No.

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1 MR. BLAKE: Anybody else?

2 CROSS EXAMINATION

3 MR. BLAKE: Let me just follow up on one of
4 those areas, Mr. Matthews, and that is with respect to the
5 correction or supplementation you made to your testimony
6 with regard to air quality and your added clarification
7 this morning.

8 Have you conferred with the Office of
9 Enforcement at all on this information that you've
10 garnered from the record?

11 MR. MATTHEWS: Not at all.

12 MR. BLAKE: Are you aware of any Office of
13 Enforcement Activity to alter the position that they've
14 taken in the modified notice of violation?

15 MR. MATTHEWS: No.

16 MR. BLAKE: So that stands, as far as you
17 know, of today without a change in the works?

18 MR. MATTHEWS: I know of no activity underway.

19 MR. BLAKE: Thank you. Last Friday, you
20 testified that you recalled quite clearly a question that
21 you had asked Mr. Bockhold during the April 9th
22 presentation and testified also about his response. That
23 testimony, if we need to give you a transcript reference
24 for it, if you want a chance to look at it before you
25 answer, but my question is this: do I understand

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1 correctly that your testimony is that on April 9th, by
2 virtue of this exchange with Mr. Bockhold, that the staff
3 understood that George Power's reference to successful
4 starts did not intend, was not intended to mean valid
5 successful starts as defined in the Reg. Guide? You might
6 not have understood what it meant, but you understood at
7 least that was not what it was?

8 MR. MATTHEWS: I believe that not only myself,
9 but other members of the staff and on subsequent review
10 and discussion with them, I don't believe anybody inferred
11 that to be valid starts.

12 MR. BLAKE: Now, would you also agree that
13 before the NRC allowed restart of Vogtle unit one on April
14 12th that the NRC did not require Georgia Power to perform
15 a specific number of consecutive successful diesel starts?

16 MR. MATTHEWS: They didn't require a specific
17 number of consecutive successful diesel starts. I think
18 there was an expectation that the operability test, as we
19 referred to it as which is part of the plant procedures is
20 that that would have been completed successfully, before
21 you would declare the diesel operable, but in terms of
22 number of consecutive successful starts, I don't believe
23 there was any expectation of some number.

24 BOARD EXAMINATION

25 CHAIRMAN BLOCH: Mr. Matthews, the number of

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1 consecutive -- does the number of successful starts mean
2 anything at all to the Agency?

3 MR. MATTHEWS: Oh, I think it meant what
4 Georgia Power has claimed was their intent and what we
5 inferred it to be, namely that there had been a
6 consecutive number of successful starts without problems
7 or failures on that machine before it was declared
8 operable.

9 CHAIRMAN BLOCH: Why was that important or not
10 important?

11 MR. MATTHEWS: I think, you know, I'll use the
12 phrase, maybe it denigrates importance, but I'll use it as
13 anecdotal meaning although it may not have had a
14 regulatory basis in terms of some requirement that we
15 would impose, we certainly didn't state any such
16 requirement. It certainly had a supportive role in
17 reassuring Stew Ebnetter, myself and others on the staff,
18 that the diesel generators were capable of being started
19 and run on a repetitive basis prior to the diesel
20 generator being placed back in service and the plant
21 restarted.

22 CHAIRMAN BLOCH: It is correct to state that
23 you didn't at the time of restart know the root cause of
24 the Site Area Emergency?

25 MR. MATTHEWS: This is true. We had Georgia

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1 Power's representation and our staff's judgment that a
2 likely root cause had been determined, but I believe our
3 staff and both Georgia Power were fairly forthright about
4 the fact we are not completely certain that this was the
5 cause of the problem.

6 CHAIRMAN BLOCH: Is there any relationship
7 between anecdotal evidence of successful starts and the
8 fact that the root cause wasn't fully known?

9 MR. MATTHEWS: I would only say that one would
10 have, namely, the number of consecutive successful starts,
11 would have an ameliorating effect on the concerns that
12 might be left with the root cause not having been
13 absolutely determined.

14 MR. BLAKE: Mr. Matthews, you were asked about
15 conclusions of the coordinating group report which is your
16 staff exhibit 50, concerning recognition, acknowledgement
17 of Mr. Bockhold's performance.

18 Did both Mr. Bockhold and Georgia Power submit
19 further responses to the NOV in February of 1995?

20 MR. STEPHEN KOHN: Your Honor, I'm just going
21 to impose an objection. I understand that those further
22 responses and those documents related to settlement and --
23 we're entwined with settlement negotiations and we've
24 already been, I think there's been a ruling that we're not
25 entitled to get documents related to those settlements.

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1 CHAIRMAN BLOCH: You're allowed to waive it
2 though.

3 MR. STEPHEN KOHN: If this question is
4 allowed, I'd like to waive and get all the documents
5 related to those negotiations.

6 MS. YOUNG: Judge Bloch, I believe those
7 letters were distributed at the time they were sent to the
8 NRC to Intervenor. In addition, I believe those letters
9 also referred to in the transmittal letter, sending the
10 modified NOV to GCP, so I think that information has been
11 made public.

12 MR. STEPHEN KOHN: We have the letters that
13 Bockhold sent, the letters sent to Bockhold. We have
14 that, but in regards to the settlement, we understood that
15 those were the fruits of a settlement and I just don't see
16 --

17 MR. BLAKE: You get the fruits and we have the
18 fruits. Why don't we --

19 MR. STEPHEN KOHN: I have the fruits. I'm
20 looking for the soil.

21 CHAIRMAN BLOCH: So far I don't understand the
22 harm of allowing the question. If there comes to be an
23 area where you feel harmed, raise the objection again. So
24 you may restate the question, Mr. Blake.

25 MR. BLAKE: Mr. Matthews, Georgia Power, both

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1 Georgia and Mr. Bockhold submitted responses, further
2 responses to the notice of violation in February of 1995,
3 correct?

4 MR. MATTHEWS: That's my understanding. I
5 don't believe we made those responses a part of our
6 testimony, although they were referred to in one of the
7 exhibits.

8 MR. BLAKE: And these responses were in fact
9 after the coordinating group report and therefore not
10 reflective in that report? Also correct?

11 MR. MATTHEWS: That's correct.

12 MR. BLAKE: I want to distribute these two
13 responses, Judge Bloch.

14 CHAIRMAN BLOCH: Do you have an objection to
15 this?

16 MR. STEPHEN KOHN: Your Honor, the only
17 objection we have right now is I would like all of the
18 underlying correspondence from both the NRC and Georgia
19 Power that ended up in this settlement and I would view
20 what they're doing now as a waiver of any -- of that
21 discovery. My objection is -- I don't think settlements
22 have any weight in this proceeding, so it's relevance is
23 materiality.

24 MR. BLAKE: He wants his cake and eat it too.
25 He wants the notice of violation and all the bad things

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1 that are said in it and he doesn't want anything positive
2 that's said or even the reflection of the modified NOV
3 which takes into account additional responses. That's
4 wholly inappropriate for the record. You've got to have
5 the whole cake.

6 MR. STEPHEN KOHN: If these letters were the
7 result of the true feelings of Georgia Power, perhaps
8 there'd be some probative weight, but what we know is
9 these letters are the result of a settlement. They have
10 no weight, no evidentiary value. They're not the result
11 of Georgia Power waking up after November 4, 1994 and
12 saying by God, we have a problem with Bockhold. They're
13 the result of a settlement and --

14 CHAIRMAN BLOCH: I hear that that affects the
15 weight of it, but I don't understand why the fact that
16 they're the result of a settlement affects admissability.

17 MR. BLAKE: Exactly. He can argue. He can
18 argue in his findings with regard to what weight the Board
19 should give these documents, but what he has argued
20 strenuously to the Board and through cross examination as
21 well, is look what he says in this and look what he says
22 here and look what he said to his people. He won't allow
23 this letter in which is something else Mr. Bockhold is
24 saying and I think is important to the record.

25 CHAIRMAN BLOCH: Objection is overruled. Does

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1 the staff have a comment?

2 MS. YOUNG: Only that the Board should look at
3 staff attachment J which is Staff Exhibit 2-51, page 2,
4 where the letter is mentioned and that the modified NOV
5 was based on reviewing GPC's responses as well as
6 supplementary responses received by GPC or received from
7 GPC and Mr. Bockhold on February 1, 1995.

8 CHAIRMAN BLOCH: As a basis for the testimony
9 that's being presented?

10 MS. YOUNG: Yes, it is a basis for the
11 modified NOV.

12 MR. STEPHEN KOHN: Your Honor, at this point,
13 if this question is to be allowed, I would like produced
14 maybe by tomorrow the complete files, both Georgia Power
15 and NRC staff leading up to this settlement. We had made
16 an earlier request and it was deemed settlement material
17 that's not relevant and therefore there's no need to
18 produce it, but now it's coming in. We want to see what
19 happened in those negotiations and what went back and
20 forth and what was bargained for.

21 MR. BLAKE: I can't speak for the staff, but I
22 can speak for us. I regard this as a waiver and I'm
23 planning to provide those and I will resist any written
24 motion that he files.

25 MS. YOUNG: Can Mr. Kohn cite any precedent

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1 for disclosure of settlement negotiations?

2 MR. STEPHEN KOHN: Yes. I mean I can research
3 it and we can go back, but now that the settlement
4 agreement is going into or the fruits of the settlement is
5 going into the record, I think we have the right -- how
6 can we cross examine the probative weight of this so-
7 called confession without knowing why it was entered into,
8 what was bargained for and what the deal was?

9 Settlement documents are generally not
10 discoverable because the settlement agreements are
11 generally not admissible and have no probative weight.
12 Once you're going to --

13 CHAIRMAN BLOCH: What's the authority for
14 settlement agreements not being admissible?

15 MR. STEPHEN KOHN: I'll look into the rule.
16 Generally -- I'll find the rule of evidence on it. I'm
17 not prepared to argue it. I'm quite surprised they're
18 even moving these in.

19 CHAIRMAN BLOCH: If you have a rule of
20 evidence, I'd like it now because this is when I'm ruling.

21 MS. YOUNG: But Mr. Kohn didn't object to the
22 receipt of Staff 2-51 when it was offered which referred
23 to these documents. He didn't make arguments about
24 settlement negotiations and the fruit of settlement.

25 CHAIRMAN BLOCH: I will receive a motion for

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1 discovery in writing and we'll see what happens with that.

2 MS. YOUNG: But Judge Bloch, I also believe
3 that this matter was raised before and the Board addressed
4 it, so this will be a late reconsideration of the Board's
5 ruling. I just can't tell you today what --

6 CHAIRMAN BLOCH: The claim is it's in a
7 different status because the settlement is being
8 introduced. I don't know that that's true, but I'm
9 willing to hear the argument.

10 MR. BLAKE: I would look forward to the
11 characterization. You'll get quite a different one from
12 us with respect to what these documents are. I would like
13 marked -- I'm sorry?

14 MS. YOUNG: I don't see how the issuance of a
15 staff NOV introduces settlement negotiations in this
16 proceeding. It was a modified NOV based on supplemental
17 information from GPC. That supplemental information which
18 Mr. Blake seeks to introduce is cited in the modified NOV.

19 CHAIRMAN BLOCH: It was not the fruit of
20 settlement negotiations at all.

21 MS. YOUNG: I can't make any statement about
22 settlement negotiations. I can tell you it was
23 supplemental information received by the NRC that was
24 relied on in modifying the NOV>

25 MR. BLAKE: I agree with that. I would like

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1 to have marked, Judge Bloch, the two documents that I've
2 distributed. The first is a document dated February 1,
3 1995 addressed to James Lieberman of the NRC, a four page
4 document signed by C. Kenneth McCoy. I would like to have
5 that marked as GPC Exhibit II-202.

6 (The document referred to was marked
7 for identification as Licensee
8 Exhibit II-202.)

9 CHAIRMAN BLOCH: Granted.

10 MR. BLAKE: The second is also a four page
11 document. This one is signed by George Bockhold, Jr.,
12 also dated February 1, 1995 and also addressed to James
13 Lieberman, NRC staff. I would like this one marked as GPC
14 II-203.

15 CHAIRMAN BLOCH: Granted.

16 (The document referred to was marked
17 for identification as Licensee
18 Exhibit II-203.)

19 MR. BLAKE: I move the admission of both
20 documents.

21 MS. YOUNG: No objection.

22 MR. STEPHEN KOHN: Objection, Your Honor.

23 First, in regards to Exhibit II-202, there's no witness
24 here who can be questioned on it. It's signed by Mr.
25 McCoy and it's sent to a Mr. Lieberman. It would be

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1 highly prejudicial to have a document submitted into
2 evidence without us having the opportunity to examine the
3 individuals it's addressed to. There's nothing on the
4 record --

5 CHAIRMAN BLOCH: Do you mean "signed by" or
6 "addressed to"?

7 MR. STEPHEN KOHN: Well, it's signed by Mr.
8 McCoy and addressed to Mr. Lieberman.

9 CHAIRMAN BLOCH: Generally, you examine the
10 person it's signed by, not the person that it's addressed
11 to.

12 MR. STEPHEN KOHN: In this case, neither are
13 here. The second one is signed by Mr. Bockhold and he's
14 not on the witness stand and it's also addressed to a Mr.
15 Lieberman. So I don't see how this panel can be used to
16 introduce these documents and Georgia Power has rested
17 their case.

18 CHAIRMAN BLOCH: I take it that the reason you
19 want these is as an understanding of the basis for the
20 work of the Vogtle coordinating group. Is that correct?

21 MR. BLAKE: Well, no, it's actually prompted
22 by the cross examination of the coordinating group and in
23 particular, the large number of views elicited with regard
24 to Mr. Bockhold and Mr. Bockhold's recalcitrant, I believe
25 the adjective was used, position, as expressed in

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1 responses to the notice of violation. These, in fact, are
2 additional supplemental responses that notice of violation
3 which on their face provide a view of both Georgia Power
4 and Mr. Bockhold and their reactions to that notice of
5 violation. The weight that it ought to be accorded at
6 this juncture, the Board has to determine, but these are
7 in fact, responsive to the very line of examination
8 pursued by Mr. Kohn with this panel. That's why we put
9 them in.

10 MR. STEPHEN KOHN: Your Honor, if I might be
11 heard, my line of questioning concerned a document dated
12 November 4, 1994 and actions taken by Georgia Power up
13 until that date and incorporation.

14 These documents and I'm just looking for
15 example on GPC Exhibit II-203, the document signed by Mr.
16 Bockhold right in the first paragraph that states as a
17 result of settlement discussions. These are moving to a
18 whole other area and there's nothing on the record that
19 this coordinating committee was even involved in those
20 settlement discussions or knows of any of the facts
21 related to why these letters were generated or how the NRC
22 staff dealt with these letters.

23 MR. BLAKE: The exhibit which Ms. Young has
24 referred you to is an exhibit sponsored by these witnesses
25 which in fact refers to the modified notice of violation

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1 which took into account on its face these two supplemental
2 responses. I can't believe counsel's argument that you
3 can consider input up through November, but not in
4 February. That's not a logical cut off.

5 MR. STEPHEN KOHN: Well, the basis, the other
6 basis of my objection is there's no witness here who we
7 can cross examine on what these documents really mean.
8 And they should have done it in their case in chief,
9 because the issue of Bockhold's performance problems and
10 Georgia Power's defense of those performance problems was
11 clearly an issue at the earliest stage of this proceeding
12 and there's no surprise here, the fact -- in fact, in my
13 opening argument I read to portions of the very
14 coordinating committee report, this November 4 report. I
15 read from those portions in opening. There's no surprise
16 here. If they wanted these documents, they should have
17 done it in their case in chief with witnesses we can
18 examine. NRC, Mr. Leiberman, they should have subpoenaed
19 him. They never asked for a subpoena. They had an
20 opportunity with Mr. McCoy. They lost it. They could
21 have done it with Mr. Harrison when he was on the stand,
22 supplementing for McCoy. They lost it. They waived it.
23 They could have done it with Bockhold on five different
24 occasions. They lost it. They waived.

25 CHAIRMAN BLOCH: It's clear to me that in

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1 order to have an adequate record in this case, we need to
2 be able to see the full context in which this decision was
3 made. Now what is the nature of the cross examination
4 that you still must have on these documents?

5 MR. STEPHEN KOHN: Well, I'd like to know why
6 these documents were in the full context of these
7 documents were prepared? If they were done as part of a
8 settlement, I think that takes away any of the --

9 CHAIRMAN BLOCH: But that's different from the
10 right to cross examine Mr. Bockhold.

11 MR. STEPHEN KOHN: I can't question him as to
12 why he wrote it and whether he really believed it.

13 CHAIRMAN BLOCH: So you're going to question
14 him about whether he believes it?

15 MR. STEPHEN KOHN: I have a right to and he's
16 not here. They could have introduce this --

17 CHAIRMAN BLOCH: I understand you've got the
18 right to do that. Do you think that would help this in
19 the proceeding much?

20 MR. STEPHEN KOHN: I think they waived it, is
21 what my point is.

22 CHAIRMAN BLOCH: I'm not willing to rule that
23 way because we need an adequate record which includes all
24 the documents that were included in the final actions of
25 the Agency.

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1 MR. STEPHEN KOHN: Your Honor --

2 MS. YOUNG: Judge Bloch, it turns on a
3 technical hearsay objection. An Intervenor has an exhibit
4 in this proceeding, GPC's response to the NOV. He did not
5 drag in the individual employee by the NRC who it's
6 addressed to, yet he's used that exhibit and many other
7 documents, DFI responses and things which were addressed
8 to numerous individuals employed at the Agency, so the
9 technical hearsay objection is not well taken. These are
10 NRC documents by virtue of them being related to the
11 enforcement action. They have previously been made public
12 and they are a basis for actions that the staff took with
13 respect to the proposed NOV.

14 CHAIRMAN BLOCH: Okay, we're done with the
15 subject here. If counsel needs further relief in the form
16 of discovery or questioning of witnesses, we would expect
17 to hear about that separately.

18 Mr. Blake, continue. We do admit these two
19 documents into evidence.

20 (The documents referred to, having
21 been previously marked for
22 identification as Licensee Exhibits
23 II-202 and II-203 were received in
24 evidence.)

25 MR. BLAKE: Thank you.

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1 MR. MATTHEWS: Mr. Blake, before you continue,
2 I need to make a minor correction to a previous response
3 that I made.

4 MR. BLAKE: Yes, please.

5 MR. MATTHEWS: In response, as you started
6 down this line of questioning I said that our testimony
7 included the modified NOV as an exhibit and these
8 documents were referenced therein. I also want to clarify
9 that in response to question 9 of our testimony, what
10 action did the NRC take after considering the November 4,
11 1994 VCG evaluation. We go into a recitation of the
12 subsequent NRC actions and we make reference in that
13 response to the reply of Mr. Bockhold dated February 1,
14 1995.

15 MR. BLAKE: You anticipated my next questions.

16 MR. MATTHEWS: I'm so glad I could do that.

17 (Laughter.)

18 MR. BLAKE: Do you want to take a guess at
19 what the next one will be now?

20 Let me shift areas, Mr. Matthews. With regard
21 to the coordinating group's conclusions regarding Mr.
22 Mosbaugh's performance, particularly on April 19th, did
23 you consider in your report the implications of the Webb
24 list and its availability?

25 MR. MATTHEWS: I'd like an opportunity to

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1 refresh my memory.

2 MR. BLAKE: Sure. Do you need a copy of the
3 Webb list? Does the panel want a copy?

4 MR. MATTHEWS: I was going to refresh my
5 memory with regard to the contents of our report.

6 MR. BLAKE: Yes, if you would, please.

7 CHAIRMAN BLOCH: Would the panel like to
8 estimate the amount of time this might take?

9 MR. MATTHEWS: I would venture five minutes.

10 CHAIRMAN BLOCH: Take a break in place.

11 (Off the record.)

12 MR. MATTHEWS: We're prepared to respond.

13 MR. BLAKE: At the time the coordinating group
14 was considering this topic and prior to issuing its
15 report, did you have available to you the Webb list?

16 MR. MATTHEWS: No.

17 MS. YOUNG: Just for the record, can you
18 identify it?

19 MR. MATTHEWS: No.

20 MR. BLAKE: Licensee or GPC II-71, I'm told.

21 MR. MATTHEWS: And that is the list that has
22 been placed in front of me by counsel. We did not have
23 this list available to us.

24 MR. BLAKE: And in reaching your conclusions
25 with regard to Mr. Mosbaugh's performance on April 19th,

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1 did you consider the implications then of that list?

2 MR. MATTHEWS: No.

3 MR. BLAKE: Now, if Mr. Mosbaugh realized on
4 April 19th that the start count being communicated to the
5 NRC in the LER on that date was meant to refer to the same
6 data discussed in the April 9th letter and therefore
7 diesel starts through April 9th, and if the Webb list
8 shows that there were not 18 consecutive successful starts
9 through April 9th, regardless of where you start the
10 count, would you have reached a stronger conclusion
11 regarding Mr. Mosbaugh's failure on April 9th, April 19th?

12

13 Do you want me to repeat that, Mr. Matthews?

14 MR. MATTHEWS: Yes. I think I have that, but
15 I'd like it repeated.

16 MR. BLAKE: Let me go through it again.

17 MR. MATTHEWS: And if you could do it in the
18 two bytes that you --

19 MS. YOUNG: And if you could break up the
20 question because I'm not sure --

21 MR. MATTHEWS: It's a compound question and
22 I'm having difficulty --

23 MS. YOUNG: The witness will answer yes to all
24 the assumptions.

25 MR. BLAKE: I want you to make two assumptions

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1 and then just reach one answer to one question. The two
2 assumptions are these. First, that Mr. Mosbaugh on April
3 19th understood that the start count being communicated to
4 the NRC in the LER was meant to refer to the same data
5 discussed in the April 9th letter and therefore, in other
6 words, diesel starts through April 9th.

7 MR. STEPHEN KOHN: Your Honor, in regards to
8 Phase I, I think we need to know what time of day on 4/19
9 because I think there's --

10 MR. BLAKE: If the witnesses need that they
11 can clearly ask.

12 MR. STEPHEN KOHN: When you work out your
13 hypothetical are you talking about his understanding of
14 when the start count cited in regards to the second
15 conversation at the end of the day or as reflected in that
16 second call with Mr. Shipman on page 58, is that what
17 you're talking about? Are you talking about other
18 understandings they may have had reflected in Tape 57? I
19 need to know where, what you're referring to specifically
20 in terms of understanding.

21 MR. BLAKE: I'm talking about Mr. Mosbaugh's
22 understanding of the language which what the intended
23 meaning of the language was that went in the final LER.

24 CHAIRMAN BLOCH: The point that we're asking
25 about is if he knew that during the conversation at the

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1 end of the day. Is that right?

2 MR. BLAKE: That's a point.

3 CHAIRMAN BLOCH: So now -- I'm not sure if the
4 witness can possibly understand the convoluted discussion
5 we've had.

6 MR. MATTHEWS: I tried not to listen to it
7 purposely.

8 MR. BLAKE: I want to know, Mr. Matthews
9 again, I want you to assume that Mr. Mosbaugh understood
10 that that's what the company intended in the LER language
11 when it referred to diesel start count. I want you to
12 assume that he understood that start count was intended to
13 mean the same data, cover the same time, up through, time
14 through April 9th.

15 MR. MATTHEWS: I understand the assumption.

16 MR. BLAKE: That's the No. 1 assumption.

17 MR. MATTHEWS: Okay.

18 MR. BLAKE: The second assumption I want you
19 to make is that the Webb list, the exhibit which you've
20 just been handed shows that there are not 18 successful
21 consecutive starts regardless of where you start the start
22 count by April 9th.

23 It doesn't matter where you start the count,
24 you can't come up with 18 consecutive successful starts if
25 the end point is April 9th. That's my second assumption.

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1 It's just an assumption.

2 MR. STEPHEN KOHN: Your Honor, I'm going to
3 propose an objection to that assumption which is -- I just
4 want a caveat added on to it which is the 18th starts as
5 reflected on the Webb list only, not 18 starts that may
6 have actually happened. That presupposes that the Webb
7 list may have been somehow complete. You have to make
8 your assumption based upon the Webb list, not 18 starts.
9 It has to be clarified. The way he posed the hypothetical
10 it was 18 starts.

11 CHAIRMAN BLOCH: I guess your hypothetical is
12 that Mr. Mosbaugh believes at the time that the Webb list
13 was accurate information.

14 MR. BLAKE: No, that's not one of my
15 assumptions. I'm only making two assumptions.

16 CHAIRMAN BLOCH: Okay.

17 MR. BLAKE: That he knew that the company
18 intended that list would stop on April 9th and I want him
19 to assume also, we haven't gotten to the Webb list, but I
20 want him to assume also if you look at that Webb list, you
21 can't come up with 18 starts no matter when you start it.
22 This business about comprehensive test program, when it
23 began, when it ended, you can't do it. Those are my two
24 assumptions.

25 CHAIRMAN BLOCH: Would you like to comment,

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1 Mr. Matthews or the panel?

2 MR. SKINNER: I'd like to ask one question.
3 Do we also assume that the Webb list as is provided today
4 with these notes on it, the notes were, in fact, on it at
5 the time of this assumption?

6 MR. BLAKE: No, you could do my hypothetical
7 without ever looking at the Webb list itself. I really
8 haven't gotten into what you're getting into.

9 MR. MATTHEWS: The only way I can respond is
10 for you to provide your hypothetical to exclude referring
11 to this list as the Webb list because it's contradictory.
12 If you're going to refer this to the Webb list, I don't
13 believe it follows that you're talking consecutive
14 successful starts without problems or failures because
15 that information was not available on the Webb list as we
16 have it.

17 MR. BLAKE: I want you to just make my
18 assumptions without looking at the Webb list.

19 MR. MATTHEWS: Well, then I don't think you
20 refer to it as the Webb list, because I can't respond if
21 you're going to refer to it as the Webb list. I can't
22 assume a list that you call the Webb list being other than
23 the Webb list which I think you're asking me to do or
24 asking us to do.

25 CHAIRMAN BLOCH: We'll state, Mr. Blake will

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1 state -- I think he can state his question without
2 referring to the Webb list. Is that correct? Let's try
3 that.

4 MR. BLAKE: If the second assumption is that
5 Mr. Mosbaugh had available to him information about diesel
6 starts or diesel runs where there were not 18 successful
7 consecutive starts in a row, prior to April 9th, no matter
8 where you started to try to make that count, if you had
9 those two pieces of information available to you, Mr.
10 Matthews, now the two assumptions, would you have reached
11 stronger conclusions regarding Mr. Mosbaugh's performance
12 failure?

13 MR. STEPHEN KOHN: Your Honor, I'm a little
14 unclear about the first assumption.

15 CHAIRMAN BLOCH: Why don't we let Mr. Blake
16 ask his question and later you can ask your question.

17 Mr. Blake?

18 Can the panel comment on Mr. Blake's question?

19 (Pause.)

20 MR. MATTHEWS: I'm sorry, were you addressing
21 questions to me?

22 CHAIRMAN BLOCH: You may respond.

23 MR. MATTHEWS: Responding to what I'll refer
24 to as the last two hypotheticals.

25 CHAIRMAN BLOCH: It would probably be best,

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1 given the complexity, if you first state your assumption
2 and then say your conclusions.

3 MR. MATTHEWS: Okay. As we understand the
4 question, we were asked to assume that Mr. Mosbaugh on
5 4/19 believed that the start count or understood that the
6 start count that the utility wanted to present in the
7 April 19th LER was the same start count as had been given
8 to the NRC in an oral presentation on April 9th and in the
9 letter dated April 9th and that he had available to him
10 information which clearly indicated that as of April 9th
11 there were not at least 18 consecutive successful starts
12 without problems or failures, whether or not our judgments
13 or conclusions with regard to Mr. Mosbaugh's performance
14 would have been different.

15 And my answer reflects the conclusions of my
16 colleagues as well is that yes, we likely would have
17 viewed his performance in a different light.

18 MR. BLAKE: If those two premises were true,
19 would Mr. Mosbaugh's failure to have insured the accuracy
20 of the LER been regarded as willful under whatever
21 gradation of willful you might apply?

22 MR. MATTHEWS: I think it's difficult for
23 these three panelists to respond to that question on a
24 short basis, given that the deliberations of the Vogtle
25 coordinating group on these kind of issues extended over a

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1 long period of time and involved the views of many
2 different people, so I'm reluctant to make that judgment
3 at this point.

4 MR. BLAKE: I'd like to ask that we be allowed
5 to take a break, that they be allowed to confer if they
6 want and I'd like to know what each of their individual
7 judgments is given those two pieces of information, if
8 they have no judgment about whether or not it would have
9 been regarded as willful.

10 CHAIRMAN BLOCH: Will a break permit the panel
11 to have time within with to respond to this question?

12 MR. MATTHEWS: My view is that it will, but
13 we'll let you know at the conclusion of that break whether
14 we've been successful. We might need more time.

15 CHAIRMAN BLOCH: We'll arrive back at 11
16 o'clock. It's 10:49, but if the panel needs more time at
17 that time, we'll provide that too.

18 (Off the record.)

19 MR. SKINNER: Mr. Blake, would you ask your
20 question again, please?

21 MR. BLAKE: I'm willing to go with Mr.
22 Matthews' rendition. Maybe it can be read back.

23 MR. STEPHEN KOHN: I've asked the reporter to
24 find it on the thing so he can read it back. I wanted to
25 get the exact wording of Mr. Matthews' understanding of

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1 the question.

2 MR. MATTHEWS: So in effect, I'm answering my
3 own question.

4 MR. STEPHEN KOHN: Should we have it read back
5 by the reporter?

6 CHAIRMAN BLOCH: Do you need it read back if
7 you understand that you are answering your own question?

8 MR. MATTHEWS: Mr. Skinner asked that it be
9 read back and I want to make sure that he's comfortable
10 with understanding the question before he starts
11 answering.

12 CHAIRMAN BLOCH: Okay, let's do that. Read
13 back what Mr. Matthews said before.

14 (Off the record. Reporter read back prior
15 questions.)

16 MR. SKINNER: Mr. Blake, my answer to that
17 question would be I would probably find Mr. Mosbaugh of
18 possible careless disregard in that area. I based that
19 primarily on the previous considerations that we had given
20 to all the other individuals that we had looked at during
21 this period of time.

22 BOARD EXAMINATION

23 CHAIRMAN BLOCH: May I ask the panel what they
24 meant by the first assumption that the company would use,
25 wanted to use the same count as they used in the April 9th

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1 letter? I was thinking about that. I wonder what that
2 means to you.

3 MR. SKINNER: To me, that means that the LER
4 information was going to be identical to the 4/9
5 information rather than take any consideration of the
6 period of time subsequent to 4/9 between 4/9 and 4/19.

7 CHAIRMAN BLOCH: As the cutoff date was
8 supposed to be 4/9?

9 MR. SKINNER: That's correct.

10 MR. MATTHEWS: That was my understanding of
11 the assumption.

12 CHAIRMAN BLOCH: And once the language,
13 comprehensive test program was introduced, would that
14 assumption remain or would that change it?

15 I'm sorry, there are other people who -- I'm
16 sorry, I thought that was an answer for the whole panel.
17 Is that not true?

18 MR. SKINNER: No, Mr. Blake asked us for
19 individual --

20 CHAIRMAN BLOCH: I'm very sorry. I shouldn't
21 be interrupting at this point. Please continue.

22 MR. MATTHEWS: My answer would similarly
23 extend to the possibility that careless disregard would
24 have been the judgment of the coordinating group, but we
25 are answering for ourselves individually and my view is

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1 that it would extend to careless disregard.

2 MR. HOOD: I think it's highly likely in that
3 situation that we would have found that it extends at
4 least to careless disregard.

5 CHAIRMAN BLOCH: Mr. Blake, I'm going to
6 reserve any further questions I have. So continue.

7 MR. BLAKE: Gentlemen, you were carried
8 through in the course of cross examination by Mr. Kohn in
9 fairly exquisite detail accounting of Mr. Bockhold's
10 performances, statements to his people, a variety of
11 actions taken by Mr. Bockhold in particular and I want to
12 ask whether or not as a result of the cross examination or
13 your thinking and responding to the questions or anything
14 really which has occurred, do you change at this point any
15 of the conclusions that you reached in your pre-file
16 testimony and I want to know from each of you. Or do you
17 stand by those at this juncture?

18 CHAIRMAN BLOCH: Do you need a recess?

19 MR. HOOD: No. I didn't get the premise of
20 the question. I'm sorry. On the basis of what?

21 MR. BLAKE: There's been a lot of information
22 elicited from you, pointed out by counsel in the course of
23 cross examination, particularly focused on Mr. Bockhold,
24 but not exclusively. He's covered a large number of
25 topics over the last day or two days in the course of

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1 testifying here and I want to ask whether or not as a
2 result of that or thinking about that, anything that's
3 been pointed out to you or anything been asked about, does
4 it cause you to change anything in your pre-filed
5 testimony and do you continue to stand by that? I'm
6 avoiding the air quality business. We've been over and
7 rehearsed that. I didn't mean to include that one in this
8 topic.

9 MR. MATTHEWS: For myself, I still believe
10 that the pre-filed testimony accurately reflects my views.

11 MR. SKINNER: I agree with that. I see
12 nothing and I've heard nothing in the last few days that
13 have changed that.

14 MR. HOOD: As I sit here, I can't think of
15 anything that I've heard that would cause me to change the
16 testimony and you have something specifically in mind,
17 we'd be glad to consider it.

18 MR. BLAKE: Have each of you read Mr.
19 Zimmerman's and Mr. Riez's testimony?

20 MR. MATTHEWS: I have at the time it was filed
21 and I don't believe I've referred to it since.

22 MR. SKINNER: Yes, I have.

23 MR. HOOD: I have, but not in the last few
24 weeks.

25 MR. BLAKE: Do you take issue with anything in

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1 their testimony?

2 MR. SKINNER: No.

3 MR. MATTHEWS: No.

4 MR. HOOD: Nothing that I'm aware of.

5 MR. BLAKE: There's been a fair amount of
6 discussion while this panel has been on about
7 communications and failures or inadequacies in
8 communications, particularly between the licensee and the
9 NRC and I know this was a focus of your concerns, Mr.
10 Matthews. I want to provide you with a couple of
11 documents and ask you some questions in this area.

12 Each of you are familiar with the SALP
13 process?

14 MR. HOOD: Yes.

15 MR. SKINNER: Yes.

16 MR. MATTHEWS: Yes.

17 CHAIRMAN BLOCH: For the record, that's S-A-L-
18 P.

19 MR. MATTHEWS: Yes.

20 MR. BLAKE: I'm sorry, Mr. Skinner did you say
21 yes?

22 MR. SKINNER: I said yes, also.

23 MR. BLAKE: I'm sorry, I missed it. Do the
24 SALP documents reflect the NRC so that collective
25 judgments about a licensee's performance, at least at that

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1 point in time when the report is issued?

2 MR. MATTHEWS: Yes, they do.

3 MR. BLAKE: And have you been involved, Mr.
4 Matthews, in the Georgia Power SALP performance reviews in
5 the '90 time frame?

6 MR. MATTHEWS: That's a difficult question for
7 me to answer because I can't recall.

8 MR. BLAKE: But maybe by showing you --

9 MR. MATTHEWS: My organizational assignment I
10 would have been, but there are times when other duties
11 cause me to assign somebody else to those duties, so I
12 can't be certain unless you had a document you could refer
13 me to and I could consult it.

14 MR. BLAKE: Do you think that your interest in
15 communications between Georgia Power and the NRC would at
16 least have prompted your involvement or knowledge about
17 what the SALP evaluation showed on that particular topic
18 in this 1990 time frame?

19 MR. MATTHEWS: If I believed that there was
20 still a continuing problem in that regard, yes.

21 MR. BLAKE: I'll distribute these and then
22 I'll mark them.

23 (Pause.)

24 CHAIRMAN BLOCH: Mr. Blake, what have you got
25 for us, just these two documents?

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1 MR. BLAKE: What we're distributing are
2 excerpts from two SALP documents, one which was issued in
3 1990 and one which was issued in 1991.

4 (Pause.)

5 MR. MATTHEWS: All right, we have those
6 documents in front of us.

7 CHAIRMAN BLOCH: Mr. Blake, I'm concerned about
8 the 1991 document.

9 MR. BLAKE: It spans 1990 period, if that's
10 your concern.

11 CHAIRMAN BLOCH: It's for the 1990 period?
12 That's fine.

13 MS. YOUNG: I believe it's October 1, 1990
14 through September 1991, so it spans a portion of the
15 report, affects the end of '90.

16 MR. BLAKE: That's even more accurate.

17 CHAIRMAN BLOCH: The separate data for that
18 quarter, is that the point?

19 MR. BLAKE: I'd have to ask the witnesses
20 whether there was emphasis, but it certainly spans the
21 period of interest.

22 MR. STEPHEN KOHN: It was my understanding
23 with the limited scope of this proceeding at this point,
24 this period of interest, was essentially ending on
25 September 1, '90. I know there's some, except as it

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1 relates to diesel generator issues, there is some follow-
2 up on it.

3 MR. BLAKE: I sure could have used that
4 argument in the past. I wish you --

5 MR. STEPHEN KOHN: I understand there's some
6 aspects that that occurred after September 1 are material
7 and relevant, but I think narrowly confined to diesel
8 generators and those issues related to them. But I'm just
9 -- I don't think these have been marked. I can't even
10 refer to them because they don't have an exhibit number.

11 MR. BLAKE: Okay, let's mark them. There are
12 two documents I distributed, Judge Bloch. The first is a
13 document dated December 10, 1990. It's addressed to Mr.
14 Hairston at Georgia Power Company and it is two page
15 letter and attached to this document is a portion of the
16 enclosure to that letter which was the interim SALP Board
17 report which spanned the period October 1, 1989 through
18 September 30, 1990.

19 The enclosure to it which is attached to the
20 two-page cover letter has the enclosure cover letter for
21 the SALP document and then pages one, two and five in the
22 SALP document and what we think we've done is extracted
23 that which is sufficient to identify the document and that
24 which covers the extent to which the document deals with
25 communications and its effectiveness or adequacy. We're

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1 not trying to exclude any comments on the topic.

2 CHAIRMAN BLOCH: The number?

3 MR. BLAKE: This would be Georgia Power II-
4 204.

5 CHAIRMAN BLOCH: Granted.

6 (The document referred to was marked
7 for identification as Licensee
8 Exhibit II-204.)

9 MR. BLAKE: The second document is a similar
10 document. It's for the next year. It's dated November
11 25, 1991. It too is a two-page cover letter by Mr.
12 Ebnetter sent to --

13 CHAIRMAN BLOCH: Mine is dated November 25th.

14 MR. BLAKE: If I misspoke, mine is also dated
15 November 25th. It's a two-page cover letter from Mr.
16 Ebnetter to Mr. Hairston at Georgia Power and attached to
17 it as well portions of the enclosure which were the SALP
18 report. Here, we've enclosed the cover letter and the
19 cover page for the SALP report and pages 5, 19, 20, 21 and
20 22.

21 You'll -- there are two purposes of this one.
22 One is the communications and the second will be on page
23 21, so people have an opportunity to look at, the third
24 paragraph which addresses specifically root cause and root
25 cause determinations.

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1 You'll see that specifically refers to diesel
2 generator problems and we believe should be in the record
3 for a complete record, Judge Bloch. So those are the two
4 documents. The second one I would like to have marked as
5 GPC II-205. I'll mark those.

6 CHAIRMAN BLOCH: Granted.

7 (The document referred to was marked
8 for identification as Licensee
9 Exhibit II-205.)

10 MR. BLAKE: Mr. Matthews, have you and the
11 other members of the panel had an opportunity to look at
12 these two documents, or do you need more time to look at
13 them?

14 MR. MATTHEWS: To the extent of investigation
15 you're going to have with these, I've had a chance to skim
16 them, but that may not support a detailed question.

17 I also note with regard to the 205 document
18 which was the November 25, 1991, you for some reason did
19 not include the page showing who the attendees of the SALP
20 report were?

21 MR. BLAKE: That certainly wasn't by
22 intention.

23 MR. MATTHEWS: Do you have those available?

24 MR. BLAKE: We do have that available.

25 MR. MATTHEWS: It would help refresh my

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1 memory.

2 MS. YOUNG: I'd also like to know if you have
3 the entire documents available so they can look at, just
4 to make sure that they're answers are in context.

5 MR. BLAKE: I don't have copies of it, but I
6 certainly have it for counsel to look at and for the panel
7 to look at.

8 MR. STEPHEN KOHN: Your Honor, I'm just going
9 to pose, I have a number of objections. I'm going to
10 start with my procedural objection. I don't believe this
11 document was produced in discovery or ever identified as
12 potential exhibit. I find it quite outrageous that here
13 this tail end of the proceeding, a document that they want
14 to use as an exhibit is handed to us for the first time.
15 It is not just a document. These are selected excerpts
16 from a voluminous document which we don't even have in our
17 possession. They could have given it to us a week ago. I
18 mean now we're supposed to review this somehow? It's
19 absolutely procedurally prejudicial and their failure to
20 identify it in their exhibit list, turn it over earlier,
21 indicate they're going to use it, use it through their
22 other witnesses, whatever, I think procedurally you should
23 bar their use of these two documents in this proceeding.
24 I mean if they want to get into the SALP report, we're
25 going to need a little time to study the SALP report and

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1 let's go have another two weeks of hearing. At this late
2 date, after they've known this has existed they want to
3 bring up the SALP reports, let's do it and in another
4 month of hearing later, but regardless of the craziness of
5 that decision procedurally, because we would need to
6 respond fully, the point is that they haven't even done it
7 yet. This is the first time I get a chance to review this
8 document.

9 CHAIRMAN BLOCH: Mr. Blake?

10 MR. BLAKE: The answer is we're not putting in
11 the entire SALP report at all and if that's a need, we
12 have it available for counsel to see. This is a surgical
13 of the SALP report. On that topic with counsel
14 extensively cross examined on, he drew out in what I
15 referred to previously and I'll reiterate as exquisite
16 detail out of Mr. Matthews, Mr. Matthews' views about
17 communications and the adequacy of communications and this
18 is the staff's contemporaneous disclosure of its view of
19 Georgia Power's communications and the adequacy of those
20 communications. I can't imagine anything more material or
21 on point, a determination to use this document in this one
22 very discrete way was made as a result of Mr. Kohn's cross
23 examination of this panel.

24 CHAIRMAN BLOCH: Wasn't the subject raised in
25 the direct testimony? Communication?

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1 MR. BLAKE: The question has been discussion
2 not only in the direct pre-filed of this, but previously
3 in this proceeding in a variety of ways. And as you well
4 know, counsel always has to make a determination of what
5 evidence to put in as a function of what record evidence
6 is being developed. When Mr. Kohn elected to go into the
7 remarkable detail he did about communications and Mr.
8 Matthews' particular views about communications and the
9 staff's view of communications and elicit from him through
10 a variety of documents which we previously have not seen
11 as well throughout this case and in this one area in
12 particular, information about this topic, I opted to elect
13 to put in this document which shows contemporaneous
14 information assessment by the staff.

15 MR. STEPHEN KOHN: Your Honor, Your Honor.

16 CHAIRMAN BLOCH: Yes, Mr. Kohn.

17 MR. STEPHEN KOHN: One, the cavalier cowboy
18 meeting is in their testimony. They elicited, they put in
19 that transcript through Mr. Hairston. We didn't move in
20 the transcript, they did.

21 Second, my detailed questioning of Mr.
22 Matthews was limited to the specific things identified in
23 the OI, reported interview and a number of meetings which
24 occurred. Third, more significantly, these
25 SALP reports are prejudicial. They have no weight

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1 whatsoever in this proceeding. Nothing. Georgia Power
2 does not state is there was a ongoing OI investigation and
3 then an ongoing staff investigation into the very matters
4 being adjudicated in this proceeding. Whatever
5 information the OI was gathering was not being shared.
6 They were -- and NRC collectively knew that. They knew OI
7 was conducting an investigation. They knew those
8 interviews were being done confidentially. Everybody knew
9 there was a large number of tapes which could seriously
10 impeach Georgia Power that no one from NRC was listening
11 to, except for a small group in OI, so the factual bases
12 of this entire proceeding, the bulk of it wasn't even
13 before the NRC staff when they wrote these SALP reports.
14 They mean nothing.

15 CHAIRMAN BLOCH: My understanding, Mr. Hayes'
16 testimony is that you're overstating that. They were
17 periodic reports from Mr. Hayes.

18 MR. STEPHEN KOHN: Well, there may have been
19 periodic reports, but I understand those were confidential
20 and those were not being shared among the whole NRC. They
21 were more like status updates. They were not "let's go
22 tell Region II where we are on all these details."

23 CHAIRMAN BLOCH: The SALP reports were high
24 Level II, so the people who share the OI report probably
25 would be involved in this SALP process?

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1 MR. STEPHEN KOHN: Well, they may be involved,
2 but I think the record is clear that that OI investigation
3 and the work of the coordinating committee was being kept
4 apart from the normal regulatory process.

5 CHAIRMAN BLOCH: But on the discovery question
6 you raise, Mr. Blake is saying he did not plan to use this
7 document, but it's his procedural response to your line of
8 cross. Under those circumstances, isn't he correct in
9 saying that there was no reason for him to list this
10 document on the discovery list?

11 MR. STEPHEN KOHN: No, because they now view
12 this document, our discovery was fairly broad and they
13 produced 90,000 documents. They were very proud of their
14 Great Wall. If they thought that discovery was not
15 limited to document which they were going to use in
16 evidence, they were specifically to documents material to
17 this proceeding, whether they were going to use them, we
18 were going to use or they were never going to be used. If
19 they believed that these documents did have weight, some
20 form of materiality on the issue being addressed here
21 which was communications, adequacy of responses, they
22 should have put them on the wall. They would have had a
23 little Bates number on the bottom right hand corner and
24 they could have said they produced it to us and gave us
25 the timely filing. But the fact that they didn't produce

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1 the SALP reports came as no surprise to us, because the
2 SALP reports would have been by nature excluding the
3 people who were working on that access to the tapes,
4 access to the OI interviews. I mean so what's the
5 probative weight. So in fact, they didn't put them there
6 is no surprise.

7 CHAIRMAN BLOCH: Are you asserting also that
8 you never reviewed the SALP reports?

9 MR. STEPHEN KOHN: One moment. Both of these
10 SALP reports were issued after Mr. Mosbaugh was
11 terminated. And they were not put in the wall of
12 documents and we --

13 CHAIRMAN BLOCH: Are you asserting that you
14 never reviewed the SALP reports?

15 MR. STEPHEN KOHN: There's a high likelihood
16 that they were not reviewed by Intervenor. I'd have to
17 question Mr. Mosbaugh in more detail if he saw some of it
18 at some point, but counsel has not reviewed them and they
19 were never identified as a document we should review among
20 the thousands and tens of thousands of documents that were
21 identified that we should review.

22 CHAIRMAN BLOCH: Solely on the issue of
23 whether they should have been produced in discovery or
24 identified in discovery?

25 MR. BLAKE: I don't know the answer. I don't

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1 have any answer about it. These documents are hardly
2 internal GPC documents.

3 CHAIRMAN BLOCH: As know that.

4 MS. YOUNG: I'm not sure Intervenor can refer
5 to an interrogatory that would have put GPC under an
6 obligation to produce the SALP report, so in terms of this
7 argument, I don't think Intervenor has sound basis there.

8 In terms of the period the SALP reports cover,
9 and the specificity with respect to issues are addressed
10 in the SALP reports, I know these witnesses today are
11 probably not prepared to respond in any detail to that
12 without looking at the entire document and that's the only
13 concern the staff would have before any inquiry into these
14 matters.

We don't object to these things
15 being used, but we would like the full copy of the two
16 reports made available so the witnesses have time to
17 consider the information before responding to questions
18 from GPC's counsel and just in looking at the excerpts
19 provided, there's even a sentence about communications
20 that's cut off in one of the documents.

21 If you look at GPC II-205, page 2 at the
22 bottom, there's a discussion about communications. The
23 sentence doesn't carry out. Before these witnesses
24 respond to questions, staff counsel would request that
25 they be allowed to see the entire document.

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1 MR. BLAKE: I don't have any problem with
2 that. I said that earlier. The sentence in question
3 happens to be internal within the plant and not within
4 NRC. Just to rule out any doubt.

5 MS. YOUNG: That's the kind of thing these
6 witnesses need to assure themselves. In addition, it
7 covers a period which extends beyond 1990. Now whether
8 that's relevant or not, I don't know, but if SALPs are
9 done on an annual basis and it is a summary of information
10 that happens over the year it may be difficult to get from
11 these witnesses what part of the year is reflected in the
12 SALP report, whether what occurred in late 1990 or in the
13 spring of 1990 carried to mostly --

14 MR. BLAKE: We'll find that out when the
15 questions are asked.

16 MS. YOUNG: They need to review the report to
17 prepare themselves for that.

18 CHAIRMAN BLOCH: So can we hold this until we
19 take the lunch break and ask the questions after the lunch
20 break? Do you have enough to take us to the lunch break?

21 MR. BLAKE: I'm all done. This is my last
22 area. I don't care whether Mr. Kohn goes back and
23 continues on other things. This topic is not going to be
24 changed particularly -- we can certainly hold off.

25 CHAIRMAN BLOCH: Okay, let's have the Board

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1 confer for a moment.

2 (Off the record.)

3 CHAIRMAN BLOCH: Without ruling on specific
4 questions and their relevance, we do find that it's
5 permissible to refer to these SALP reports in question.
6 These are public documents. They're widely known and the
7 specific cause for referring to them is Georgia Power's
8 response to the cross examination conducted by the
9 Intervenor. If it were part of its case in chief, the
10 discovery problem would be greater. If it was anticipated
11 that this was going to be used by Georgia Power, they had
12 an obligation to produce it, but I don't think we need to
13 rule about that at this point.

14 We are still concerned about whether 1991
15 information will be relevant because that would open up
16 the whole Pandora's Box of the quote remedy phase. But
17 we'll rule on that as it comes up.

18 MR. STEPHEN KOHN: Your Honor, we would
19 request that the Board have Georgia Power provide us with
20 a copy of the complete SALP reports.

21 CHAIRMAN BLOCH: They said they're going to.

22 MR. STEPHEN KOHN: We need copies right now.

23 CHAIRMAN BLOCH: We're not going to conduct
24 the examination on that until after lunch. Mr. Blake has
25 rested except for his questions on the SALP reports. Is

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1 Intervenor prepared to -- wait a second, yes, is
2 Intervenor prepared to proceed at this point?

3 MR. STEPHEN KOHN: Yes, Your Honor, one
4 moment.

5 CHAIRMAN BLOCH: We expect to break at 10
6 minutes of the hour today.

7 MR. STEPHEN KOHN: My co-counsel just wants me
8 to call the Board's attention to our view of the SALP
9 issues. If they do go in, if they are questioned in any
10 type of general fashion like did SALP make a general
11 conclusion, it would be our conclusion, it would be our
12 position that all of the 2.206 issues have to be probed
13 into because in regards to communications and their
14 sufficiency, the SALP report isn't limited to diesel
15 generators and we have numerous --

16 CHAIRMAN BLOCH: They're only offering the
17 part -- I guess it doesn't, no --

18 MR. STEPHEN KOHN: I'm just letting the Board
19 know that -- and the parties know our position, because to
20 rebut a SALP finding, communications in this time period,
21 we will have to go into those 2.206 issues.

22 CHAIRMAN BLOCH: That's an interesting
23 statement. We'll deal with that as it comes up.

24 MR. STEPHEN KOHN: And Your Honor, I have some
25 -- I have enough questioning I think to take us to lunch

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1 and then we can come back to SALP and then I can complete
2 my cross.

3 CHAIRMAN BLOCH: Please.

4 MR. STEPHEN KOHN: Would you please look at
5 GPC Exhibits 202 and 203. This is for the panel.

6 (Pause.)

7 I'll begin my questions with Mr. Matthews.

8 (Pause.)

9 If you can look at Exhibit 202. And if you
10 can look at the second paragraph in Exhibit 202, third
11 sentence, first phrase.

12 MR. MATTHEWS: Let me read the second
13 paragraph, please?

14 MR. STEPHEN KOHN: Sure.

15 (Pause.)

16 MR. MATTHEWS: All right.

17 MR. STEPHEN KOHN: In regards to the first
18 phrase in the third sentence which states as a result of
19 recent settlement discussions between counsel, do you see
20 that phrase?

21 MR. MATTHEWS: Yes.

22 MR. STEPHEN KOHN: My question is I'd like to
23 know everything you know or have heard related to the
24 settlement discussions.

25 MS. YOUNG: Objection. Judge Bloch, I think

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1 it's clear that when settlements go on, the results of
2 those settlements in terms of the actions taken between
3 parties are often made public and yes, they have occurred
4 in this case. But the intermediate steps leading up to
5 those results are not something that are proper for
6 inquiry in this proceeding or any proceeding.

7 MR. STEPHEN KOHN: Your Honor, I'd like to
8 call --

9 MS. YOUNG: Otherwise the purposes of
10 settlement are frustrated, if all those conversations
11 become public.

12 MR. STEPHEN KOHN: Your Honor, I'd like to
13 call the Board's attention to Federal Rule of Evidence 408
14 which states, which first states the general rule as
15 articulated by counsel for NRC, but then has the caveat
16 which I think is applicable in this matter and I'll quote
17 to it which states, "this rule also does not require
18 exclusion when the evidence is offered for another purpose
19 such as bias or prejudice."

20 In this case, we're offering this evidence for
21 another purpose, i.e., whether the statements made by
22 Georgia Power in these two letters represented a genuine
23 feelings, a genuine repentance or whether they were part
24 of posturing in a settlement context and that other
25 purpose strikes to the heart of the probative value of

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1 these two documents.

2 MS. YOUNG: You've been looking at Rule 408.
3 I'm not sure that Intervenor will be able to prove through
4 inquiries of this panel any prejudice on the part of the
5 individual who wrote the letter.

6 MR. STEPHEN KOHN: It's not limited such as
7 providing bias or prejudice. If it's used for another
8 purpose.

9 CHAIRMAN BLOCH: Mr. Kohn, the record contains
10 the responses to the demand for information and then after
11 the settlement negotiations, there's a further response.
12 So it's quite clear from our record what the witnesses
13 were willing to say initially and what they said later.
14 What more do you really need in terms of their
15 credibility?

16 MR. STEPHEN KOHN: Your Honor, it's very
17 important for Intervenor to understand the basis of the
18 settlement discussions because to understand how Georgia
19 Power acted in terms of the language used in these
20 letters, we need to know what was behind that.

21 CHAIRMAN BLOCH: Let me ask the panel this
22 question, was the -- were these statements submitted in
23 fulfillment of a settlement condition?

24 MS. YOUNG: Could you first ask these
25 witnesses if they were involved in the settlement

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1 discussion?

2 CHAIRMAN BLOCH: Do you know whether or not
3 these statements in Exhibits 202 and 203 were submitted in
4 satisfaction of settlement conditions?

5 MR. SKINNER: I do not know.

6 MR. MATTHEWS: I do not know.

7 MR. HOOD: No, I do not.

8 MS. YOUNG: And my question were they involved
9 in settlement negotiations?

10 CHAIRMAN BLOCH: Were any of you involved in
11 settlement negotiations?

12 MR. SKINNER: I was not involved in it.

13 MR. MATTHEWS: I was not involved.

14 MR. HOOD: I had no involvement.

15 MS. YOUNG: In addition, Judge Bloch, the
16 letter says as a result of the settlement discussion
17 between counsel, the company has a better understanding of
18 our concerns. That's the only basis for the reference to
19 settlement negotiations. In other words, there have been
20 further discussions to get explanations of what the NRC
21 was concerned about in terms of the diesel generator
22 reporting issue. I don't see how that statement opens up
23 to scrutiny everything that transpired during settlement.

24 CHAIRMAN BLOCH: Mr. Blake, is there any way
25 to clear up the one issue of whether or not these

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1 statements were in satisfaction of a settlement condition?

2 MR. BLAKE: I don't understand that they were
3 -- the representation is whether or not they were sincere
4 or not and I have every reason to believe that they are
5 sincere representations of the people and the entities
6 providing these responses and to the extent they're not in
7 Intervenor's eyes, this is something for argument in their
8 findings, jus as you pointing out, several minutes ago.

9 CHAIRMAN BLOCH: It seems to me relevant to
10 the degree of sincerity whether or not these were in
11 satisfaction of settlement conditions.

12 MR. BLAKE: I don't even understand that
13 position. You're either prepared to say A and B because
14 you are or you're not.

15 CHAIRMAN BLOCH: We're going to have a brief
16 discussion of the panel.

17 (Off the record.)

18 CHAIRMAN BLOCH: Board is listening.

19 MS. YOUNG: I think we have problems also in
20 terms of the attorney-client privilege to the extent that
21 these discussions were held primarily between counsel and
22 advice of counsel to include their respective clients. In
23 addition, if the motivation behind reaching a settlement
24 discussion, settlement agreement is disclosed that also
25 frustrates the public policy in terms of encouraging

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1 settlements. It's not a matter that's open for inquiry
2 from that standpoint.

3 If Mr. Kohn or Intervenor wants to examine the
4 credibility, the conviction associated with statements in
5 a letter, that could be done by asking Mr. Bockhold or
6 other GPC witnesses directly about what was a basis for
7 their statements, whether they believe those statements.
8 He can bring those people in this room and the Board can
9 also determine the credibility of their responses. You
10 don't have to find out what went on in settlement to make
11 that determination.

12 MR. STEPHEN KOHN: Your Honor, I just
13 interpret Ms. Young's comments as confirming that there
14 was, in fact, a settlement.

15 MS. YOUNG: The letter says "as a result of
16 settlement discussions."

17 MR. STEPHEN KOHN: And consequently there was
18 a settlement reached?

19 CHAIRMAN BLOCH: The Board is going to have a
20 brief recess.

21 (Off the recess.)

22 CHAIRMAN BLOCH: The Board has consulted.
23 Back on the record. We conclude that the settlement
24 discussion should be protected, but as a consequence there
25 is no ability to know about what happened in those

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1 discussions. We therefore presume that these letters were
2 a condition of the settlement. If the parties involved in
3 the settlement want to prove otherwise, they may, but the
4 credibility of the statement is affected by the fact that
5 we can't find out about the origin.

6 There will be no further questions about the
7 settlement. We will adjourn for lunch. We'll come back at
8 1:30.

9 (Whereupon, at 11:53 a.m., the hearing was
10 recessed, to reconvene at 1:30 p.m., Wednesday, September
11 27, 1995.)

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GPC II-204



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W.
ATLANTA, GEORGIA 30323

DEC 10 1990

Docket Nos. 50-424, 50-425
License Nos. NPF-68, NPF-81

Georgia Power Company
ATTN: Mr. W. G. Hairston, III
Senior Vice President -
Nuclear Operations
P. O. Box 1295
Birmingham, AL 35201

Gentlemen:

SUBJECT: SYSTEMATIC ASSESSMENT OF LICENSEE PERFORMANCE
(NRC INSPECTION REPORT NOS. 50-424/90-23 AND 50-425/90-23)

The NRC Systematic Assessment of Licensee Performance (SALP) has been completed for your Vogtle facility. The facility was evaluated for the period of October 1, 1989 through September 30, 1990. The results of the evaluation are documented in the enclosed Initial SALP Report. This report will be discussed with you at a public meeting to be held at the Vogtle facility in Waynesboro, Georgia, on December 18, 1990, at 10:00 a.m.

The performance of your Vogtle facility was evaluated in the functional areas of Plant Operations, Radiological Controls, Maintenance/Surveillance, Emergency Preparedness, Security, Engineering/Technical Support, and Safety Assurance/Quality Verification. Overall, the assessment indicates that the Vogtle facility was operated in a safe manner. Radiological Controls practices were noted as being superior. However, demonstrated performance deficiencies in the Security and Emergency Preparedness areas indicate a need for continued aggressive and extensive management attention.

The loss of vital ac power event on March 20, 1990, and the resultant declaration of a Site Area Emergency was the dominant operational occurrence during this rating period. While the immediate response of site personnel was effective in precluding the endangerment of the public, performance deficiencies were identified. You have initiated an extensive corrective action program to correct the shortcomings and preclude their recurrence. It is essential that this program be continued and that the lessons learned be integrated into your daily operational activities.

A special NRC team inspection was performed in August 1990, to determine whether the facility was being operated in a safe manner. Based upon this inspection it was determined that Vogtle was being operated in a safe manner, but there were operational practices where weaknesses were identified. The results of this special team inspection will be transmitted under separate correspondence.

NUCLEAR REGULATORY COMMISSION

Docket No. 50-424/425-OLA-3 EXHIBIT NO. II-204

In the matter of Georgia Power Co. et al., Vogtle Units 1 & 2

Staff Applicant Intervenor Other

Identified Received Rejected Reporter SB

Date 9/27/95 Witness KINNER / HOOP / MATHEWS

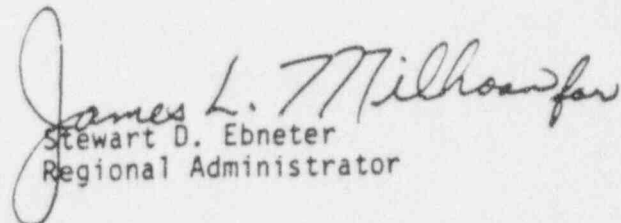
DEC 10 1990

The great diversity of categorical ratings within this report indicate that firm management is needed to ensure uniform, consistent guidance for operating the facility. NRC inspection efforts over the next SALP period will focus on evaluating whether this consistency is developed.

Any comment you have concerning our evaluation of the performance of your Vogtle facility should be submitted to this office within 30 days following the date of our meeting. These comments will be considered in the development of the Final SALP Report. Your comments and a summary of our meeting will be issued as an appendix to the Final SALP Report.

Should you have any questions concerning this letter, we will be glad to discuss them with you.

Sincerely,


Stewart D. Ebner
Regional Administrator

Enclosure:
Initial SALP Report - Vogtle

cc w/encl:
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Executive Vice President-Nuclear
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(cc w/encl cont'd - see page 3)

ENCLOSURE
INTERIM SALP BOARD REPORT

U. S. NUCLEAR REGULATORY COMMISSION
REGION II

SYSTEMATIC ASSESSMENT OF LICENSEE PERFORMANCE
INSPECTION REPORT NUMBERS
50-424/90-23 AND 50-425/90-23

GEORGIA POWER COMPANY

VOGTLE, UNITS 1 AND 2

OCTOBER 1, 1989 THROUGH SEPTEMBER 30, 1990

I. INTRODUCTION

The Systematic Assessment of Licensee Performance (SALP) program is an integrated NRC staff effort to collect available observations and data on a periodic basis and to evaluate licensee performance on the basis of this information. The program is supplemental to normal regulatory processes used to ensure compliance with NRC rules and regulations. It is intended to be sufficiently diagnostic to provide rational basis for allocation of NRC resources and to provide meaningful feedback to the licensee's management regarding the NRC's assessment of their facility's performance in each functional area.

An NRC SALP Board, composed of the staff members listed below, met on November 20, 1990, to review the observations and data on performance, and to assess licensee performance in accordance with the guidance in NRC Manual Chapter NRC-0516, "Systematic Assessment of Licensee Performance". The Board's findings and recommendations were forwarded to the NRC Regional Administrator for approval and issuance.

This report is the NRC's assessment of the licensee's safety performance at the Vogtle Units 1 and 2 for the period October 1, 1989 through September 30, 1990.

The SALP Board for Vogtle was composed of:

- L. A. Reyes, Director, Division of Reactor Projects (DRP), Region II (RII) (Chairperson)
- A. F. Gibson, Director, Division of Reactor Safety, (DRS), RII
- B. S. Mallett, Deputy Director, Division of Radiation Safety and Safeguards, (DRSS), RII
- A. R. Herdt, Chief, Reactor Projects Branch 3, DRP, RII
- D. B. Matthews, Director, Project Directorate II-3, Office of Nuclear Reactor Regulation (NRR)
- D. Hood, Project Manager, Project Directorate II-3, NRR
- B. P. Bonser, Senior Resident Inspector, Vogtle, DRP, RII

Attendees at SALP Board Meeting:

- K. E. Brockman, Chief, Project Section 3B, DRP, RII
- S. E. Sparks, Project Engineer, Project Section 3B, DRP, RII
- R. F. Aiello, Resident Inspector, Vogtle, DRP, RII
- R. D. Starkey, Resident Inspector, Vogtle, DRP, RII
- G. R. Wiseman, Reactor Engineer, Technical Support Staff, DRP, RII

II. SUMMARY OF RESULTS

During this assessment period, Vogtle has been operated in a safe manner. Plant management has maintained an active involvement in directing daily plant operations. Concern has been expressed over the licensee's

commitment to fostering effective communications channels, both with the NRC and within its own organization. Also, operational occurrences and inspections have identified the licensee's commitments to conservative operations and implementation of effective risk management as areas requiring continuing attention.

On March 20, 1990, the site experienced a loss of vital ac power which resulted in the loss of all shutdown cooling for a period of 36 minutes. Overall, the response of the plant staff was successful in ensuring the health and safety of the public was maintained. However, numerous shortcomings were identified in areas such as procedural adequacy, command and control, and outage management.

Performance in the area of Radiological Controls continued to be very effective. A reduction in the number of personnel contamination events and a decrease in contaminated area was observed. The program to control and quantify radioactive effluents, as well as the program to reduce the number of out-of-service channels in process and effluent monitors, was considered a strength.

Satisfactory performance was identified in the Maintenance/Surveillance area. Improvements were noted in preventive and predictive maintenance programs. The material condition of the plant is being greatly improved. However, inadequacies were identified in the safety system outage program philosophy. Technical Specification (TS) surveillances also continued to be missed. Maintenance activities contributed to four reactor trips during the assessment period.

The March 20 event identified significant problems in the Emergency Preparedness area, as demonstrated by the site's failure to make timely notifications to emergency agencies, event classification procedure weaknesses, loss of command and control, and personnel accountability problems. Management attention and corrective actions were evident during the subsequent annual exercise.

The licensee continued to experience significant difficulties in the area of control and protection of safeguards information. Some improvement was noted in the security program in the areas of training, armed response capability, and search equipment. However, corrective actions to resolve weaknesses have been slow. Inadequacies were also identified in alarm assessment capabilities and the manner in which contingency drills were conducted.

Engineering/Technical Support effectiveness was inconsistent during the assessment period. Site engineering involvement in daily activities was evident, control over the design change process was demonstrated, and engineering evaluations were typically comprehensive. However, several engineering deficiencies were noted during the assessment period, such as drawing legibility, check valve testing, and recurring Emergency Diesel Generator (EDG) temperature switch problems. Communications between the

Overall, operational performance during the assessment period was adequate. Licensed and non-licensed operators displayed competence in performing their duties. Normal shift staffing levels exceeded TS requirements. However, past attrition of licensed operators prevented the licensee from attaining their goal of assigning extra personnel to shift coverage. In response, early in this SALP period, the licensee instituted a cash incentive program to promote licensed operator retention. While attrition during the past year has been low, whether this incentive program has resulted in a long term correction has yet to be determined.

Operators continued to display a professional attitude toward their responsibilities while maintaining a good control room demeanor. They were attentive to annunciators and knowledgeable of changing plant conditions. Turnover checklists were thorough and detailed. Shift crew briefings were adequate and provided necessary plant status for the oncoming crew. During the assessment period, Reactor Operators adopted the use of a twelve-hour shift schedule, resulting in improved continuity, fewer shift turnovers, and better implementation of the team concept. Control room log book entries were legible and accurately reflected plant status. An exception to good log keeping was identified with EDG start failures. Numerous EDG start failures were not considered to be valid and were, therefore, not appropriately logged. Proper logging of the EDG response could have led to an earlier recognition of the EDG air start valve problem discussed in Section IV.G.

The most significant operational event of the assessment period occurred on March 20, 1990, when Unit 1 experienced a loss of all safety (vital) ac power. In response to this event, an Augmented Inspection Team (AIT) was dispatched to the site on March 21, 1990. This inspection effort was subsequently upgraded to an Incident Investigation Team (IIT) which culminated in the issuance of NUREG-1410.

Overall, the plant staff's response to the event was successful in minimizing the threat to public health and safety. Aggressive actions were taken to re-establish shutdown cooling and containment integrity. Both short-term and long-term alternatives were pursued by the plant staff in trying to restore vital electrical power. However, numerous shortcomings were identified during the event. No procedures existed to assist the staff in re-establishing vital ac power from potential sources such as the non-vital buses, or Unit 2. Long-standing deficiencies in the protective trip system for the EDGs were discovered. Application of effective risk management

in the licensee's outage management philosophy was brought into question (Section IV.F). The ability of the licensee to accurately reconstruct the details of the event and to communicate these details and other information to the Commission was poor.

During this assessment period, one incident occurred in which operations personnel made decisions and took actions without sufficient support or input from either the applicable onsite or offsite organizations. This incident occurred during the Unit 1 refueling startup when shutdown bank E dropped to zero steps from a withdrawn position. Operations performed trouble-shooting activities and resumed the control bank worth measurements without obtaining any technical input from other plant groups for establishing proper procedural controls.

During the last two SALP periods, problems were identified within the Operations area concerning attention to detail. These problems have continued as exemplified by decisions to make a Mode change while in an LCO Action Statement, and by the removal of both trains of Containment Spray from service during a Mode which required one train to be operable.

Operations management continued to have an active involvement in daily plant operations. Daily operations status meetings were attended by both site and corporate management. This has promoted open discussions between all department managers concerning plant status. A general area of concern throughout this SALP period has been communications between management and the NRC. These communication channels have recently improved as was evidenced by an increase in licensee management interface with the resident inspectors on information regarding potential regulatory issues and maintenance problems. An additional example of management involvement has been the Management Observation Program. This program, which includes mandatory field observations by all levels of plant managers, has provided a formal means for management to evaluate plant activities.

During a Unit 1 walkdown conducted by an NRC inspector, several valves were identified as missing their label tags. This was the result of plant personnel failing to initiate actions to replace the tags in accordance with plant procedures. The licensee is currently conducting a retagging effort to resolve these discrepancies in Unit 1, scheduled to be completed in 1991. Labeling in Unit 2 was observed to be adequate. Based on inspector walkdowns, housekeeping was determined to be satisfactory.

transfer of data between the scheduling program and the work order database, and providing a method for closing the containment equipment hatch during loss of all power conditions. Furthermore, the sequence for performing the Engineered Safety Features Actuation System (ESFAS) testing and associated EDG inspections has been moved to the beginning of the outage to include as much safety equipment testing as possible.

An additional area of concern identified during this SALP period was the inadequacy of communications between the various technical departments supporting the plant. The March 20 event displayed this inadequacy in three ways - the use of incore thermocouples by the operating staff which were not indicative of core conditions, the discovery of a construction error on the Unit 2 main turbine differential overcurrent relay setting, and the inability to close the Unit 1 containment equipment hatch as required. This was further exemplified by the NRC identified condition where containment integrity was not maintained during hydrogen analyzer testing. In all three cases, lack of effective interdepartmental exchanges of information were contributing factors to these problems. However, there were instances of effective interdepartmental cooperation. An example was ESFAS testing, where site engineering's involvement in daily management meetings helped enhance communications and allowed the test to be conducted effectively.

During the last assessment period, communications between the corporate engineering staff and the NRC displayed some weaknesses. Since that time, communications have been good. This was demonstrated in the licensee's interface with the NRC on technical issues, including the surge line stratification and the Ten-year Interval ISI Program.

A strong licensed operator training program was demonstrated by the initial and requalification examination results. Initial examinations were administered to 16 Senior Reactor Operators (SROs) with 16 SROs passing. The requalification training program was rated as satisfactory based on a 94 percent pass rate. Six of 6 Reactor Operators (ROs), 10 of 11 SROs, and 4 of 4 crews passed requalification examinations. The simulator was upgraded to resolve modeling deficiencies identified in the previous assessment period. The simulator was on schedule for certification in late 1990.

The actions of the operators during the March 20 event also demonstrated the adequacy of the training program. Core exit thermocouple and water level indications were closely monitored so that core conditions could be evaluated. EOPs and AOPs were effectively used. However, some training deficiencies were

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

2 (2:02 p.m.)

3 CHAIRMAN BLOCH: Mr. Blake?

4 REDIRECT EXAMINATION

5 MR. BLAKE: Gentlemen, have you had a chance
6 to review GPC Exhibits 204 and 205 and as well the entire
7 SALP documents from which these were extracted?

8 WITNESS SKINNER: Yes, we have.

9 MR. BLAKE: On GPC Exhibit 204, I want you to
10 focus on the page which is unnumbered, but I believe it to
11 be Page 1 of the report, the sentence which starts at the
12 bottom of that page with the word "concern" and carries
13 over to the top of the next page, Page 2, and then two
14 sentences which appear on Page 5.

15 The two sentences appear in the penultimate
16 paragraph on Page 5, in the middle of that paragraph. And
17 the first sentence begins with the words "A general area
18 of concern" and ends with "maintenance problems."

19 WITNESS HOOD: Give me those cites again,
20 please.

21 MR. BLAKE: I'm sorry. I didn't hear you, Mr.
22 Hood.

23 WITNESS HOOD: Give me the cites again,
24 please.

25 MR. BLAKE: Yes. The first sentence was at

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1 the bottom of Page 1, beginning with the words "Concern
2 has been expressed," just that sentence that carries over
3 to the top of Page 2.

4 And the second was two sentences that appear
5 on Page 5 in the next to the last paragraph, in the middle
6 of that paragraph, two sentences, the first of which
7 begins "A general area of concern." And the second is
8 "These communication channels."

9 Now, Mr. Matthews, let me start with you
10 because you were on the SALP board and one of the members
11 of the SALP board. Does your having been on a SALP board
12 mean that you would have played a role in the evaluations
13 which led to this language being incorporated in the SALP
14 report?

15 WITNESS MATTHEWS: Yes.

16 MR. BLAKE: And, therefore, at that point you
17 would have reviewed this language and played a role in its
18 development?

19 WITNESS MATTHEWS: Yes.

20 MR. BLAKE: Do you recall agreeing to this
21 language?

22 WITNESS MATTHEWS: As I sit here now, no, I
23 don't recall.

24 MR. BLAKE: Do you have any reason to believe
25 that you wouldn't have agreed with it at the time?

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1 WITNESS MATTHEWS: No, I have no reason to
2 believe that I wouldn't have supported this language.

3 MR. BLAKE: In fact, your belief would be that
4 you did agree with it at the time?

5 WITNESS MATTHEWS: Yes.

6 MR. BLAKE: And do you have any reason to
7 believe that it was anything other than what the NRC
8 observed as its position on Georgia Power at that point in
9 time in the Vogtle facility?

10 MR. STEPHEN KOHN: Your Honor, I'm going to
11 raise two objections. One goes to scope, and the second
12 goes to "the NRC" is a vague term. Who in the NRC?

13 CHAIRMAN BLOCH: What's the scope problem?
14 "The NRC" being vague I understand. What's the scope
15 problem?

16 MR. STEPHEN KOHN: As I understand it, anyone
17 in the NRC about these problems, I think it's just opening
18 the door to a fairly broad cross-examination. I think
19 that's what I'm saying. I think the way that question was
20 phrased is extremely open-ended.

21 CHAIRMAN BLOCH: Could we have the question
22 again, Mr. Blake, so we can figure out what this is about?

23 MR. BLAKE: I don't know that I can do
24 precisely the same question again, Judge Bloch.

25 CHAIRMAN BLOCH: Maybe you can get the essence

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1 of it in a way that won't get to the --

2 MR. BLAKE: I think I can get the essence of
3 it, which was: Do you believe that these sentences
4 reflected the NRC? And I guess with the problem that's
5 reflected by the objection with NRC's --

6 CHAIRMAN BLOCH: Could we limit the question
7 to the people who were on the panel? That might help to
8 reflect the view of the SALP team.

9 MR. BLAKE: Sure. The view of the SALP team.
10 That's a good suggestion. Reflected their belief about
11 this area of communications.

12 WITNESS MATTHEWS: Yes, I do.

13 MR. BLAKE: I don't have any more questions on
14 this document. I want now to go to -- what?

15 WITNESS MATTHEWS: I think I have to be
16 careful, though. You understand that the SALP report has
17 to be treated in its entirety. I'm not disagreeing that
18 the views that you just saw or cited me to were views that
19 were shared by the board.

20 But there were other views on communication
21 expressed in that SALP report. And those were also shared
22 by the board.

23 CHAIRMAN BLOCH: Would you indicate which
24 sections you think are most salient in that regard?

25 WITNESS MATTHEWS: That relate to

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1 communication, I had noted --

2 MR. BLAKE: We're talking about communication
3 between Georgia Power and the NRC; correct?

4 WITNESS MATTHEWS: Not solely.

5 MR. BLAKE: Well, that's what I'm talking
6 about.

7 WITNESS MATTHEWS: Then I'll look at my
8 comments again to see that they're confined.

9 MR. BLAKE: Okay.

10 WITNESS MATTHEWS: At the top of Page 5 --

11 MR. BLAKE: Yes, sir.

12 WITNESS MATTHEWS: -- there is the statement
13 "The ability of the licensee to accurately reconstruct the
14 details of the event and to communicate these details and
15 other information to the Commission was poor."

16 MR. BLAKE: Fair enough. Thanks.

17 CHAIRMAN BLOCH: Let me ask: Do we need to
18 supplement the exhibits so that the reference to the
19 report will be able to be understood in the record?

20 MR. STEPHEN KOHN: I believe so, Your Honor.
21 I think Page 4 needs to come in. And specifically to
22 understand what the witness just identified, I think you
23 would need Page 4, the last paragraph and then as it
24 continues onto Page 5.

25 CHAIRMAN BLOCH: Would you like to move to

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1 supplement it in that way?

2 MR. STEPHEN KOHN: Yes, Your Honor.

3 WITNESS MATTHEWS: Why don't we wait until I'm
4 finished?

5 MR. STEPHEN KOHN: Yes.

6 WITNESS MATTHEWS: And then maybe you can do
7 this altogether.

8 MR. STEPHEN KOHN: Your Honor, just to make
9 life --

10 CHAIRMAN BLOCH: That's a good idea. Let the
11 witness finish the answer.

12 WITNESS MATTHEWS: If you would look on Page
13 20? Let me make sure I have the right report. There is a
14 sentence three paragraphs down.

15 MR. BLAKE: Is it the paragraph that begins
16 "During"?

17 WITNESS MATTHEWS: Yes. That whole paragraph
18 reflects on communication between the NRC and Vogtle. And
19 I'll look to my two co-witnesses, but I believe that
20 captures any statements in that SALP report with regard to
21 the narrow issue of communication.

22 MR. BLAKE: Mr. Skinner and Mr. Hood, do you
23 need to add anything else?

24 WITNESS SKINNER: No, I don't.

25 MR. BLAKE: Mr. Hood?

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1 WITNESS HOOD: No.

2 MR. BLAKE: Mr. Hood, you were also on that
3 SALP board?

4 WITNESS HOOD: Yes, I was.

5 MR. BLAKE: Now, I think Mr. Kohn's idea is
6 correct. If there's anything else that ought to be added
7 or supplemented in this, I'd certainly have no objection
8 to that. You suggested 4. Mr. Matthews' comment would
9 lead to Page 20 as well.

10 CHAIRMAN BLOCH: I think there's 4 and 5;
11 right, and then 20?

12 MR. BLAKE: Five was already in, I believe,
13 Judge Bloch.

14 CHAIRMAN BLOCH: Five's in?

15 MR. BLAKE: Yes.

16 MR. STEPHEN KOHN: I will note that the
17 sentence you referenced on unnumbered page, which we can
18 presume is the Page Number 1, --

19 MR. BLAKE: Yes.

20 MR. STEPHEN KOHN: -- starting on Page Number
21 1 and moving on to Page 2, that that sentence does have as
22 its subject matter both communications with the NRC and
23 within its own organization.

24 MR. BLAKE: Okay.

25 CHAIRMAN BLOCH: Mr. Kohn, I think it's fair.

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1 Licensee when they had the communications problems
2 addressed to it by the NRC believed that it needed to
3 address internal communications in order to sure up
4 external communications.

5 BOARD EXAMINATION

6 CHAIRMAN BLOCH: So in order to assess the
7 relevance of the internal communications problems, could
8 you point out which ones you were about to identify for
9 us?

10 WITNESS MATTHEWS: Yes. An additional comment
11 was made on Page 5, the second full paragraph -- well,
12 it's really the first full paragraph that started, "During
13 this assessment period." And it reflects on
14 communication. It says, "During this assessment period,
15 one incident occurred in which operations personnel made
16 decisions and took actions without sufficient support or
17 input from either the applicable on-site or off-site
18 organizations." And I believe that's reflective of
19 internal communication.

20 The next reference I was going to make is to
21 Page 7. And under the section labeled "III.
22 Recommendations," there is a comment there, "During the
23 rating period, it was noted that there were numerous
24 instances where activities were pursued without
25 interactive communications having been established between

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1 the various cognizant groups at the plant."

2 And, of course, that was buttressed by the
3 next paragraph, which said, "Inspection efforts should
4 remain high, and the licensee needs to improve performance
5 throughout those areas which impact plant operational
6 activities."

7 On Page 20, again the first full paragraph,
8 starting with "An additional," the sentence is "An
9 additional area of concern identified during this SALP
10 period was the inadequacy of communications between the
11 various technical departments supporting the plant."

12 Those are the only instances I found.

13 CHAIRMAN BLOCH: Mr. Matthews, we had a
14 comment at one point by Mr. Stokes that I don't fully
15 understand. It was a comment that I think suggested that
16 he wasn't sure if contaminants had been found in Calcon
17 sensor devices, whether he as diesel engineer would have
18 been informed by the INC group about those contaminants.

19 Do you know anything about a history of
20 non-communication of that type?

21 WITNESS MATTHEWS: I think that's an example
22 or would be an example of the kind of communication
23 problems we had identified during that SALP period and
24 were identifying to Georgia Power's attention.

25 CHAIRMAN BLOCH: If that kind of problem

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1 exists, why is it that anyone would take comfort with the
2 thought that if someone discovered water, that they would
3 tell Mr. Stokes about water?

4 WITNESS MATTHEWS: It's my opinion that you
5 would have to question whether that would have been
6 communicated.

7 CHAIRMAN BLOCH: Mr. Blake, do you want to
8 continue with the witness?

9 MR. BLAKE: I guess at this juncture I would
10 move this document into evidence, 204 and I guess as
11 supplemented by the pages suggested by Mr. Kohn and I
12 guess as well if it's the Board's desire the additional
13 page. I think it was only one, would require only one
14 additional page, which was 20, to cover the internal.

15 I want to make it clear that the reason that I
16 opted to put this in now was in response to the cross. I
17 don't remember internal communications being raised in
18 that. I tried surgically to stick to just the scope,
19 which I thought had been prompted by Mr. Kohn's cross.

20 And, therefore, to the extent we now increase
21 or add to this exhibit, I don't want to have the argument
22 come back to me, "Well, okay. Now if you put in internal,
23 we're allowed to go through all of that because you want
24 it for purposes of adequacy of the record."

25 And while I'm happy to make it a part of our

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1 exhibit, at least I want that understanding, Judge Bloch.

2 CHAIRMAN BLOCH: It's understood that that was
3 not the purpose for which you --

4 MR. BLAKE: Okay. And I will undertake to
5 supplement the copies that we provide to the court
6 reporter of 204 so that each of the pages that anybody has
7 referred to here are included in it.

8 CHAIRMAN BLOCH: The Board appreciates that.
9 And we would like the exhibit to include those
10 supplemented pages, too.

11 MS. YOUNG: Had the Board decided whether they
12 want this exhibit bound in so the testimony is easier to
13 understand?

14 CHAIRMAN BLOCH: It may be bound in
15 immediately after the lunch break.

16 MR. BLAKE: And it is admitted. Is that
17 correct?

18 MR. STEPHEN KOHN: Well, we have a standing
19 objection.

20 CHAIRMAN BLOCH: It is admitted, yes.

21 (Whereupon, the aforementioned
22 document, having previously been
23 marked for identification as GPC
24 Exhibit Number II-204, was received
25 in evidence.)

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1 MR. STEPHEN KOHN: Well, over objection, Your
2 Honor, as previously stated.

3 CHAIRMAN BLOCH: That's okay.

4 REDIRECT EXAMINATION

5 MR. BLAKE: Okay. Now, gentlemen, I want to
6 turn to GPC-205, November 25, 1991 dated SALP report.
7 Now, in this report I want you to focus -- we may run into
8 the same problem, Mr. Matthews, about NRC-GPC
9 communications, as opposed to internal, but what I want
10 you to focus on is on Page 5, the next to the last
11 paragraph that begins, "Communication between the NRC and
12 licensee management."

13 CHAIRMAN BLOCH: Which page?

14 MR. BLAKE: Page 5. It's the next to the last
15 paragraph. Are you okay?

16 WITNESS MATTHEWS: Yes.

17 MR. BLAKE: And on Page 19, two paragraphs on
18 Page 19, the third paragraph of text, which begins
19 "Management generally kept the NRC informed," and the
20 paragraph immediately thereafter that says, "The licensee
21 requested meetings."

22 WITNESS MATTHEWS: Yes. I'm waiting on you.

23 MR. BLAKE: Mr. Skinner? Mr. Hood? What's
24 that?

25 WITNESS HOOD: Yes.

1 MR. BLAKE: I note, Mr. Hood, that you were on
2 this SALP board?

3 WITNESS HOOD: Correct.

4 MR. BLAKE: And, Mr. Skinner, at least you
5 attended meetings?

6 WITNESS SKINNER: That's correct.

7 MR. BLAKE: Now, does the fact that you were
8 on the SALP board, Mr. Hood, on this mean that you would
9 have played a role in the development of this language
10 characterization of communications which are expressed in
11 this SALP report?

12 WITNESS HOOD: Yes.

13 MR. BLAKE: Mr. Skinner, same question, the
14 fact that you weren't on the board but that you attended.
15 Would you have played a role, actually, in the development
16 of this or in input which led to this evaluation?

17 WITNESS SKINNER: Yes, I would.

18 MR. BLAKE: Now, Mr. Hood and Mr. Skinner,
19 does reading this text refresh your memory about your
20 involvement on these topics at that point in time?

21 WITNESS SKINNER: No, it does not.

22 MR. BLAKE: Mr. Hood?

23 WITNESS HOOD: Yes.

24 MR. BLAKE: And do you believe that the
25 language here reflected the staff's position as of the

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1 last two months in 1990 and carrying forward into 1991?

2 MR. STEPHEN KOHN: Your Honor, I'm going to
3 object now as being beyond the scope of my cross and
4 outside the scope of the proceeding for two reasons.
5 First, I did question Mr. Matthews generally about certain
6 instances that occurred with the "cavalier cowboy" meeting
7 and before in the 1990 time period running up to about the
8 at the end date August of '90.

9 The instances which I questioned him on after
10 August of 1990 were carefully tailored and specifically
11 related to responses to the NOV, related to the matters
12 directly pertaining to this proceeding, and whether
13 attitudes which were reflected in '89-'90 time period were
14 also again repeated within those responses to the NOV,
15 which I saw as being tailored to what's within the scope
16 of this proceeding.

17 In looking over this SALP report here and its
18 discussions on communications, they're talking about areas
19 beyond the scope of this proceeding.

20 That's not to say it's not relevant in a
21 remedial phase of this proceeding in terms of what type of
22 remedy would be appropriate. And many, many, many issues
23 which would be relevant in a remedial phase we just
24 haven't been adjudicating here.

25 So I would object to any questioning in terms

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1 of the substance of those statements.

2 MR. BLAKE: Judge Bloch, I'm glad he mentioned
3 remedial phase because it's not unimportant to a basis for
4 the Board's accepting this into the record here.

5 The first reason for it is because it does
6 indeed span the end of 1990. And it shows a response or a
7 reaction by the company in the exact same time frame that
8 Mr. Kohn attempted to show on cross was not appropriate.
9 See, what he did was --

10 CHAIRMAN BLOCH: Let's check that out. I
11 mean, what do you look at the time period that he was
12 addressing?

13 MR. BLAKE: Well, he was addressing the time
14 period after the "cowboy cavalier" meeting, which took
15 place on April 30, 1990. He then said, "How about the
16 June letter? How about the August letter? Did you still
17 see in those letters some indication? How about November
18 1994? Did you still see in the NOV some characterization
19 of arrogance or" -- he's going to '94.

20 I'm asking that you take into account the last
21 couple of months at least of 1990 and possibly to the
22 extent these witnesses are able to discern it between
23 those couple of months and into '91.

24 If you allow communications to show a pattern
25 of something which is bad, I think you've got to show at

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1 least to this very restricted and limited scope something
2 that shows just the opposite.

3 And I think that not just because of the scope
4 of this proceeding, but as well this very ticklish
5 business of whether or not we're going to have a remedy
6 phase and whether or not there's a need for a remedy
7 phase.

8 I think this document is important to the
9 Board's consideration. I was worried, and I expressed it
10 the other day about your questioning of the panel and
11 whether or not -- even from my vantage point, whether it
12 led to the development of a record which showed the need
13 for a remedy phase. And, of course, I don't think there
14 is a need. And we'll be arguing that in our findings
15 based on this record.

16 But I don't think that the Board can exclude
17 this kind of material, which shows that the NRC staff was
18 aware, that the NRC staff was assessing, that the NRC
19 staff was evaluating, and that the NRC staff was seeing in
20 this licensee a response other than the other Mr. Kohn
21 would have you believe based on those couple of documents
22 which he pointed these witnesses to.

23 CHAIRMAN BLOCH: Mr. Kohn, isn't it the case
24 that you did ask questions about the "cowboy cavalier"
25 attitude that included August of 1990 and then the NOV

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1 response?

2 MR. STEPHEN KOHN: Yes.

3 CHAIRMAN BLOCH: Now, isn't Mr. Blake,
4 therefore, correct that it's responsive to your cross?

5 MR. STEPHEN KOHN: No for two reasons. As I
6 understand the scope of this proceeding and your rulings,
7 as things relate to the diesel generator, we can look at
8 actions after August of 1990 to get an interpretation of
9 what was occurring in that time period. In other words,
10 the scope really narrows after August of '90 just to
11 diesel generator.

12 And let me tell you what the danger is here.
13 And it kind of is like a two-edged sword. In one level,
14 it's what I would almost call the genius of the scope
15 rulings inasmuch as what's happened is we have been able
16 to look at one small piece of Georgia Power, the way they
17 handled a very major event, but one piece with great
18 detail, getting opinions from everybody, but creating a
19 really solid record, which allows you to see how this
20 plant was functioning, out in one area, but it really
21 gives you a good view.

22 My client has informed me -- I can look at
23 this over. And there's another section in here. I don't
24 want to get into the details. But, I mean, we could have
25 two weeks of testimony on it because my client has insight

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1 to what really was happening in that area; in other words,
2 that we could really sit around and have a proceeding on.

3 But that's the problem. In no other area do
4 we have the record. We have tapes, the type of
5 documentation to really look. When they just want a
6 discovery and all of that, brush over other areas, we can
7 come back to those very areas and say, "Hold it. Did you
8 know this, this, this, this, this?" And, all of a sudden,
9 you have a mushrooming proceeding.

10 I think, as I understand the scope ruling,
11 it's let's look at the one area, make our rulings on that,
12 and then see how that might impact on a remedy phase. And
13 we may have to look at other areas in a remedy phase just
14 to see what the appropriate remedy is.

15 But what he's doing by inching out, he's going
16 right out on a ledge here, which is going to require us to
17 I think expand the proceeding in a way that was not -- I
18 don't think my questions did.

19 I didn't ask the general question, "In 1994,
20 did you see the same 'cavalier' attitude?" I tailored
21 those questions. And he can go back and ask about that
22 tailored area.

23 But I think they're broadening the scope. And
24 what's interesting is they're broadening the scope after
25 about 20 weeks of hearing at the very, very end of the

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1 proceeding, when all the witnesses have testified.

2 And where do we go from here, restart the
3 whole proceeding up again because they've enlarged it or
4 just stick with your prior rulings and deal with this when
5 the time comes?

6 If they're right, if they had great
7 communications and they've all improved so well, well,
8 let's see what happens in the relief phase if that's the
9 case. But to do it now at the very end of this proceeding
10 I think is going far afield from both my limited cross and
11 I think where they ultimately want to see the proceeding
12 head.

13 CHAIRMAN BLOCH: Mr. Blake, a brief response?

14 MR. BLAKE: Yes, I do. First of all, I want
15 to speak to the "tailoring," as Mr. Kohn put it, of his
16 questions. And I urge you to take a look specifically at
17 Transcript Page 15076, where the question was, "Did the
18 coordinating committee limit its review just to the
19 material that Georgia Power was submitting its response in
20 the NOV and the DFIs or did it look at other responses?"

21 MR. STEPHEN KOHN: And I think the answer was
22 "It was limited."

23 MR. BLAKE: The Board can review what the
24 scope was that you were tailoring it to.

25 MR. STEPHEN KOHN: I was clarifying that that

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1 --

2 MR. BLAKE: Let me finish, if I can, my brief
3 reply.

4 CHAIRMAN BLOCH: We'd better read --

5 MR. BLAKE: I have no desire -- if anything's
6 been apparent, this must be -- to increase the scope of
7 this proceeding. I have no desire to have a remedy phase.
8 I would also ask the Board to focus specifically on the
9 reference to electric diesel generators and high jacket
10 temperature trip in the very paragraph that I'd ask this
11 panel to focus on.

12 CHAIRMAN BLOCH: What line on 15076?

13 MR. BLAKE: All I have is the computer portion
14 in front of me.

15 CHAIRMAN BLOCH: Does Staff have a comment in
16 this area?

17 MS. YOUNG: Staff's kind of caught in the
18 middle on this one. Bringing in SALP reports for periods
19 that are outside of the scope of the inquiry in this
20 proceeding, which is primarily diesel generator
21 communications through August of 1990, is truly
22 problematic.

23 The second exhibit, where Mr. Kohn raised this
24 objection, does cover the period in '91. And I'm not sure
25 we had testimony either from this panel or other witnesses

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1 as to the status of communications between GPC and the NRC
2 in 1991 or even the NRC's perception of communications.
3 So I think in terms of scope of the second exhibit, it
4 does somewhat fall outside of things that are pertinent
5 for this proceeding.

6 Now, Mr. Kohn did ask questions about the NOV
7 response in 1994. If you allow this second exhibit to
8 cover the entire period through September of 1991, I can
9 predict that this proceeding will get bogged down into
10 looking at SALP reports for '92, '93, and on up to that
11 period.

12 That's the problem with looking at SALPs and
13 particular SALPs and not limited to particular quarters,
14 just a general statement and evaluation for the entire
15 year. And it may be difficult, whether it's this panel or
16 even a GPC panel, to determine which months are
17 characterized by which findings.

18 Statements "Generally this has occurred" don't
19 really give you any information as to whether the
20 communications were good in the early part of the year or
21 they fell short in the middle of the year. You just don't
22 have the kind of precision in a SALP report that I think
23 the Board would need to make evaluation on terms of the
24 status of communications.

25 So in some respects I can agree with GPC's

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1 arguments that no, this hasn't been raised late and in
2 some ways maybe responsive to Mr. Kohn's cross regarding
3 the NRC's opinions of GPC communications in 1990.

4 But in other respects these two exhibits taken
5 together may fall outside the period that's pertinent for
6 the Board to be requiring in terms of this stage of the
7 proceeding.

8 CHAIRMAN BLOCH: We're concerned both about
9 having a complete record on the response to the "cowboy
10 cavalier" attitude and also on not expanding the scope to
11 get into a broad scope of issues beyond the diesel
12 generator, beyond the appropriate time in 1990. We're
13 leaving that vague as to right now.

14 What we want to do is to -- we rule that the
15 second exhibit, 205, which contains the SALP report, dated
16 November 25, 1991, will not be admitted into evidence.

17 Mr. Blake, you may, however, use this document
18 to refresh the memory of the panel and to ask questions
19 about how they remember that the "cowboy cavalier"
20 attitude question may have been resolved following its
21 introduction.

22 So we don't want to get into the broad scope
23 of all of this, but if specific items here are within the
24 time period or you can establish having refreshed the
25 memory of these people that there was a timely

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1 follow-through on the suggestion that would be within the
2 scope.

3 MR. BLAKE: I appreciate that, Judge Bloch. I
4 want to ask one clarifying question. Are you limiting me
5 to the extent to which it was cured in 1990?

6 CHAIRMAN BLOCH: I wasn't limiting it in quite
7 that way. I'm limiting it to the direct response to the
8 meeting that was held since I feel that they understand
9 how the resolution occurred or that there was a timely
10 resolution of the comments made in the meeting, which I
11 guess was in late April of --

12 MR. BLAKE: It was April 30.

13 MS. YOUNG: In addition, Mr. Blake, I'd
14 request that you supplement GPC-205 for the record with a
15 list of attendees. I think that came up earlier this
16 morning.

17 I'm not sure that was done yet because you
18 asked the witnesses about whether they had attended or
19 participated in the panel. And it's not reflected in the
20 exhibit that was marked.

21 MR. BLAKE: Yes. I'll undertake to do that.

22 CHAIRMAN BLOCH: Mr. Blake, the ball is back
23 in your court. Do you need a break, Mr. Blake, to --

24 MR. BLAKE: No, no, I don't need a break.

25 Mr. Hood, when I asked whether or not this

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1 helped refresh your memory at all during this period, you
2 indicated that it did. In your view, did the company
3 react favorably, responsively to the April 30 meeting, at
4 which the NRC management pointed out problems that it had
5 with the communications?

6 WITNESS HOOD: You're talking about
7 afterwards?

8 MR. BLAKE: Yes.

9 ADMINISTRATIVE JUDGE MURPHY: Mr. Hood, would
10 you get up to the microphone, please?

11 WITNESS HOOD: Yes, I think there was. After
12 that meeting, there was an improvement in the
13 communications between the NRC and GPC.

14 MR. BLAKE: And during 1990, were these
15 improvements in the communications reflected understood,
16 appreciated by members of the NRC staff?

17 WITNESS HOOD: You're covering all of 1990 in
18 your question?

19 MR. BLAKE: Yes, I am, throughout the
20 remainder of 1990.

21 WITNESS HOOD: The remainder of 1990?

22 MR. BLAKE: Yes. Well, of course, beyond when
23 the meeting took place.

24 WITNESS HOOD: I don't know that I can speak
25 to the earlier part of 1990. I only came on board, became

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1 the project manager of Vogtle in 1990. So it's difficult
2 for me to address that except it would not be a direct
3 observation but what I've learned from others. And there
4 are others here who are much more qualified to speak to
5 that earlier time frame than I am.

6 MR. BLAKE: Okay. Well, let me just stick to
7 the time frame when you were able to directly make your
8 own observations and to the extent you can assign those to
9 this period of time; that is, the second half of 1990 or
10 from August to the end of 1990.

11 Was it your observation that Georgia Power was
12 attempting to improve its communications with -- are you
13 being handed a hint by Mr. Matthews? And if so, what's
14 the hint? Why don't you just read it to us?

15 WITNESS MATTHEWS: Do you want to know?

16 CHAIRMAN BLOCH: Yes. It would be better just
17 to say it out loud.

18 WITNESS MATTHEWS: The hint says, "OSI 50.9
19 enforcement conference."

20 MR. BLAKE: Now, with that hint, could you
21 answer my question?

22 MR. STEPHEN KOHN: Your Honor, actually, with
23 that hint, I'm just going to raise an objection. Now that
24 this witness has explained his scope of knowledge; i.e.,
25 beginning in August '90, first, he'd have no comparison of

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1 what things were like before August '90 to make a
2 comparison. He'd be basing it on hearsay and speculation;
3 whereas, the other witnesses on the panel I think would
4 have better bases.

5 And, second, since the time period that's of
6 most interest to this Board dovetails off after August '90
7 --

8 CHAIRMAN BLOCH: Objection is sustained on the
9 basis of the time period for comparison.

10 BOARD EXAMINATION

11 CHAIRMAN BLOCH: May I ask, Mr. -- I'll ask
12 anyone on the panel --

13 WITNESS HOOD: Judge Bloch?

14 CHAIRMAN BLOCH: Yes, Mr. Hood?

15 WITNESS HOOD: I do need to clarify something,
16 though.

17 CHAIRMAN BLOCH: Sure.

18 WITNESS HOOD: Even though I came on board in
19 August of 1990, one of my first assignments was to
20 participate in the SALP process. And that did entail my
21 going back and working as I could, both from the -- with
22 the individual who was a project manager previously to me
23 --

24 CHAIRMAN BLOCH: So what month was that in
25 that you started doing that?

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1 WITNESS HOOD: I'm talking now in the
2 September-October time frame, I believe. I'm talking off
3 the top of my head. But it was not long after that.

4 CHAIRMAN BLOCH: So as a member of the SALP
5 team, you were informed by your team members, fellow team
6 members, about what had been going on. Is that what
7 you're saying?

8 WITNESS HOOD: I worked with the former
9 project manager and to solicit his input and determine the
10 input for NRR into the SALP report. So I had involvement
11 in it.

12 But I'm only trying to make the point that the
13 -- in my role in doing that, I was not basing my input on
14 any firsthand observation at that point.

15 CHAIRMAN BLOCH: But as a member of the team,
16 you did get information from the former resident
17 inspector. Is that what you said?

18 WITNESS HOOD: Former project manager.

19 CHAIRMAN BLOCH: Project manager?

20 WITNESS HOOD: Yes and worked with him on --
21 collectively to come up with that input.

22 CHAIRMAN BLOCH: I think we understand the
23 extent of your knowledge. And to the extent that you were
24 involved in official NRC functions to which you were
25 assessing communications, it does seem to be within your

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1 official duties. So I would allow the question now.

2 We've changed our decision on that.

3 Maybe I want to ask Mr. Matthews a question
4 anyway, but anyone on the panel can respond. Was there a
5 substantial change in the quality of the communications
6 between the NRC and Vogtle following the departure as
7 plant manager of Mr. Bockhold?

8 WITNESS MATTHEWS: I may be the only one that
9 spanned Mr. Bockhold's tenure there. And I viewed there
10 to be a dramatic change after his departure. He was
11 replaced by --

12 CHAIRMAN BLOCH: You should indicate for the
13 record which direction the change went in.

14 (Laughter.)

15 WITNESS MATTHEWS: I was still completing my
16 remarks. Mr. Bockhold left the site in the Fall, as I
17 understand it, of 1990. He was replaced by Mr. Shipman,
18 who has been a witness in this hearing.

19 Mr. Shipman's style contrasted with Mr.
20 Bockhold's again in the arena I'll compare to being 180
21 degrees in a better direction.

22 CHAIRMAN BLOCH: Mr. Blake?

23 REDIRECT EXAMINATION

24 MR. BLAKE: Mr. Hood, are you able now to
25 generally express your views of -- the question, Mr. Hood,

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1 is really: Did you get a sense or do you recall whether
2 or not you had a sense in 1990, the latter half, after you
3 were there, and taking into account whatever knowledge you
4 had, that Georgia Power's management was trying to foster
5 good communications with the NRC?

6 MR. STEPHEN KOHN: I'm just going to raise my
7 -- I think the way he's phrasing it now, I'm going to
8 raise my same objection. I think the way the Board placed
9 the basis of his ability to answer was appropriate, but I
10 think his question again goes beyond the limitations of
11 the Board's --

12 MR. BLAKE: I misunderstand. In what way?

13 CHAIRMAN BLOCH: Mr. Blake, I would prefer
14 that the questions be about actual communications and
15 behavior, rather than about intentions. What you're
16 trying to do and what you're doing may be very different.
17 So if you can just rephrase the question to a --

18 MR. BLAKE: I'd be happy to have you ask the
19 question, Judge. I'm sure that you understand what the
20 significant issue is here. Then we can maybe cut down on
21 number of objections and get to the goal line more
22 quickly.

23 BOARD EXAMINATION

24 CHAIRMAN BLOCH: Mr. Hood, in your work on the
25 SALP team, did you obtain information that allowed you to

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1 conclude that there was a change in the quality of
2 communications during the time period in 1990,
3 communications between Vogtle and the NRC?

4 WITNESS HOOD: Yes. And I believe it's
5 reflected in this SALP report that -- during that time.

6 CHAIRMAN BLOCH: Okay. But we're asking for
7 your personal recollection right now. What do you
8 recollect to be the change? We're talking about, in
9 particular, through --

10 WITNESS HOOD: Are you asking me things that I
11 personally observed as --

12 CHAIRMAN BLOCH: Well, or learned as --

13 WITNESS HOOD: -- I've seen doing --

14 CHAIRMAN BLOCH: Either observed or learned as
15 a team member through the time period roughly
16 September-October of 1990.

17 WITNESS HOOD: In that immediate time frame, I
18 don't believe I can cite specific things, not off the top
19 of my head. As I sit here today, I don't think I can give
20 you an example of things that happened in August,
21 September, October time frame that I would point to as
22 improving communications.

23 CHAIRMAN BLOCH: Did you or the former project
24 manager, with whom you were working, notice any change
25 following the departure of Mr. Bockhold?

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1 WITNESS HOOD: My difficulty in answering that
2 question in the sense that you are asking me about things
3 that I'm observing, as opposed to things I'm learning, is
4 that I had a very limited period in my tenure as project
5 manager, where Mr. Bockhold was in a position of plant
6 manager.

7 CHAIRMAN BLOCH: I appreciate your candor
8 about that, but we really did want to find out your
9 personal knowledge. So if it was a limited period, that
10 just restricts how much you can testify about from
11 personal knowledge.

12 WITNESS HOOD: What I'm saying is during that
13 time frame there was not that much interaction between
14 myself and Mr. Bockhold that I had a -- you know, if we're
15 talking about a change that we understood the initial
16 condition -- and coming on board in August, I didn't get
17 much of a chance to assess firsthand that problem. I had
18 to infer that problem from the experiences of others.

19 CHAIRMAN BLOCH: Well, now, I did ask if in
20 the course of working on that team you learned from your
21 other team members. That was part of what I asked.

22 WITNESS HOOD: Oh, okay.

23 CHAIRMAN BLOCH: If you interpret it that way
24 as well, then can you --

25 WITNESS HOOD: I'm sorry. No. I thought you

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1 were asking me to restrict my answer to my own
2 observation.

3 CHAIRMAN BLOCH: If you work on the team, you
4 get certain information as part of the work of being on
5 the team. And that's in the course of your employment.
6 So that's allowable, too.

7 WITNESS HOOD: My clear -- my recollection
8 from this 1990 SALP period is that we did have a
9 communication problem, that it extended, that it was most
10 acute at the site level, particularly the communications
11 involving our resident inspector, but that it was not
12 limited to that. There was a broader based communication
13 problem as well.

14 CHAIRMAN BLOCH: Was there a period at which
15 it seemed to have been resolved during the time you were
16 on the SALP team?

17 WITNESS HOOD: I'm still on the SALP team. I
18 mean, the SALP is a continuing process.

19 CHAIRMAN BLOCH: Okay. But during the team
20 that was working in the Fall of 1990, did there seem at
21 that time to have been a resolution or did you think it
22 was still a continuing problem?

23 WITNESS HOOD: I believe a large part of the
24 problem resolved about the October or so time frame, when
25 there was a change in the plant -- the general manager's

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1 position.

2 MS. YOUNG: Judge Bloch, is your question
3 whether the communication deficiency was resolved during
4 the SALP period of the team that he worked on?

5 CHAIRMAN BLOCH: No. I wanted it to be on the
6 time period we focused on, which is the September-October
7 period, which is close enough to the April meeting that I
8 think it's part of the corpus of what we're talking about.
9 So the answer is responsive.

10 Mr. Skinner, you seem to want to say
11 something, too.

12 WITNESS SKINNER: No, sir. I was not involved
13 at that time, unfortunately.

14 CHAIRMAN BLOCH: Mr. Blake?

15 MR. BLAKE: I have no more questions. And I
16 appreciate your time, gentlemen. Thank you.

17 CHAIRMAN BLOCH: Mr. Kohn?

18 MR. STEPHEN KOHN: Yes.

19 RE-CROSS-EXAMINATION

20 MR. STEPHEN KOHN: I'm just a little bit
21 curious about the reference to the OSI in August of 1990
22 vis-a-vis whether communications were improving. And I'll
23 direct that question to Mr. Matthews.

24 WITNESS MATTHEWS: Yes. And my purpose, of
25 course, in communicating to Mr. Hood was if he hadn't

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1 covered it, I would have. There was an instance in the
2 period surrounding the on-site operational safety
3 inspection that occurred in August, which I think has been
4 discussed here before.

5 The team and the NRC had a concern with regard
6 to information that was shared during that inspection,
7 namely that there was concerns that complete information
8 or accurate information wasn't always shared when
9 initially asked for by the inspectors who were
10 participants in that.

11 That issue was addressed in an enforcement
12 conference sometime after that OSI. The NRC did not
13 pursue and did not issue any notices of violation. But
14 the concern was expressed by team members. And we
15 explored it with GPC.

16 MR. STEPHEN KOHN: And right now can you
17 recollect some of the matters which you felt there may not
18 have been complete communications on?

19 WITNESS MATTHEWS: No. I don't have
20 sufficient recollection of that, the details associated
21 with that.

22 MR. STEPHEN KOHN: And the concerns that came
23 up in the OSI time period, in August, those weren't
24 limited just to communications from Mr. Bockhold, were
25 they?

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1 WITNESS MATTHEWS: No.

2 MR. STEPHEN KOHN: And are you aware as you
3 participate in this proceeding of a document known as the
4 white paper?

5 WITNESS MATTHEWS: Yes.

6 MR. STEPHEN KOHN: And we've cited, as you may
7 recollect, to certain statements made in the white paper.
8 Do you remember that?

9 WITNESS MATTHEWS: I remember the white paper,
10 and I remember it coming up in this proceeding.

11 MR. STEPHEN KOHN: Do you have any concerns
12 regarding the accuracy of information provided in the
13 white paper?

14 WITNESS MATTHEWS: To come up with a
15 determination on that or even my personal opinion, you
16 know, I'd have to do some research and look at the white
17 paper and reassure myself of its accuracy.

18 CHAIRMAN BLOCH: For the record, what's the
19 date of the white paper?

20 ADMINISTRATIVE JUDGE MURPHY: Whose exhibit is
21 the white paper?

22 MR. STEPHEN KOHN: That's an intervenor
23 exhibit.

24 MS. YOUNG: Ninety-five. It depends on which
25 one you're referring to.

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1 MR. STEPHEN KOHN: Is it 95?

2 MS. YOUNG: Ninety-five is the thick
3 collection.

4 MR. STEPHEN KOHN: Yes. That's the one. I
5 think it had that cover memo.

6 CHAIRMAN BLOCH: So that I'll know the import
7 of the white paper on this topic, I would like to know the
8 date.

9 MR. STEPHEN KOHN: Okay. The two dates, as
10 I'm informed by my client, are 8-16 and 8-22, 1990. Would
11 you like the actual exhibit number at this point in the
12 record?

13 CHAIRMAN BLOCH: If it's different from 95.
14 And if we could sit on that, if it's different, you'll let
15 us know.

16 MR. STEPHEN KOHN: Okay. Now, there's been
17 testimony concerning the SALP from December 1990. My
18 question is: Was this incident regarding what happened in
19 August with the OSI mentioned or referenced in the
20 December 1990 SALP report?

21 WITNESS MATTHEWS: No, it was not.

22 MR. STEPHEN KOHN: So there might have been
23 matters related to the communications between Georgia
24 Power and the NRC between the time period of October 1,
25 1989 and September 30, 1990 which were, although

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1 significant, not referenced or mentioned in the SALP
2 report?

3 WITNESS MATTHEWS: Give me those dates again.

4 MR. STEPHEN KOHN: On the cover page of the
5 SALP report, it says it covers the period from October 1,
6 1989 through September 30, 1990.

7 WITNESS MATTHEWS: Okay. And your question
8 again was?

9 MR. STEPHEN KOHN: My question is: Excluding
10 the OSI, which you have already provided the testimony on,
11 were there other instances of communications problems
12 between NRC and Georgia Power which were not referenced in
13 the SALP report?

14 WITNESS MATTHEWS: Not that I'm aware of.

15 MR. STEPHEN KOHN: So this is the only one
16 that wasn't referenced that you're aware of?

17 WITNESS MATTHEWS: It was referenced. So I
18 take exception to your --

19 MR. STEPHEN KOHN: Oh, in the SALP report. I
20 thought you said it wasn't referenced.

21 WITNESS MATTHEWS: No.

22 CHAIRMAN BLOCH: I did, too. So maybe you
23 want to show where it was referenced.

24 WITNESS MATTHEWS: Well, if you look at the
25 cover letter on December 10th, 1990, which is GPC II-204,

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1 the bottom of the page says, "A special NRC team
2 inspection was performed on August 1990 to determine
3 whether the facility was being operated in a safe manner
4 based upon this inspection. It was determined that Vogtle
5 was being operated in a safe manner, that there were
6 operational practices where weaknesses were identified.
7 The results of this special team inspection will be
8 transmitted under separate correspondence."

9 MR. STEPHEN KOHN: So among those operational
10 practices where weaknesses were identified would be
11 included communications?

12 WITNESS MATTHEWS: In that that was a
13 reference to the fact that there was an OSI inspection and
14 the results of that OSI inspection would be communicated
15 separately, yes.

16 MR. STEPHEN KOHN: Now, the fact that a
17 material false statement was submitted by Georgia Power in
18 a 4-9-90 confirmation of action letter response and/or the
19 oral presentation 4-90, was that referenced in this SALP
20 report?

21 WITNESS MATTHEWS: I take exception to how you
22 asked the question. Is there a phrase "material false
23 statement" utilized in the record with regard to --

24 MR. STEPHEN KOHN: The SALP report.

25 WITNESS MATTHEWS: No. I'm asking you about

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1 with regard to the 4-9 letter.

2 MR. STEPHEN KOHN: Excuse me?

3 CHAIRMAN BLOCH: Let's put it a more simple
4 way.

5 WITNESS MATTHEWS: Please.

6 BOARD EXAMINATION

7 CHAIRMAN BLOCH: Were any deficiencies in
8 communication that occurred on April 9, 1990 mentioned or
9 considered in the SALP report?

10 MS. YOUNG: Judge Bloch, does your question
11 really go to every communication that occurred on April 9,
12 1990?

13 CHAIRMAN BLOCH: Well, in particular to both
14 the oral presentation and the COAR letter.

15 WITNESS MATTHEWS: I don't believe at the time
16 we were doing the SALP in the fall that we were aware, at
17 least I don't recall I was aware, of shortcomings in the
18 April 9, 1990 correspondence. I may have been. I'm just
19 -- my recollection now is that that wasn't utmost in my
20 mind.

21 CHAIRMAN BLOCH: Apparently you were aware of
22 the shortcomings in the oral presentation.

23 WITNESS MATTHEWS: That's correct. But not in
24 the regard to the specifics that we know now with regard
25 to the number of diesel starts and their number and

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1 whether they were consecutive without problems or
2 failures.

3 It was just a -- you may recall I testified
4 earlier in this proceeding about my concern that I had an
5 impression that Mr. Bockhold's communication to the NRC
6 was -- had the same limitations that I detected in the
7 past in communicating with Mr. Bockhold.

8 CHAIRMAN BLOCH: Mr. Kohn?

9 MR. STEPHEN KOHN: Okay.

10 RE-CROSS-EXAMINATION

11 MR. STEPHEN KOHN: And also was there any
12 reference in the SALP report to any deficiencies which
13 occurred in the 6-29-90 cover letter signed by Mr.
14 Hairston transmitting the revised LER?

15 WITNESS MATTHEWS: I'll say no.

16 MR. STEPHEN KOHN: Okay. And, again, the same
17 would go for any deficiencies in the 8-30-90
18 correspondence signed by Mr. McCoy concerning the LER?

19 WITNESS MATTHEWS: No.

20 MR. STEPHEN KOHN: Okay.

21 CHAIRMAN BLOCH: You left out the 4-19 LER.

22 MR. STEPHEN KOHN: Yes. And in regards to the
23 --

24 MR. BLAKE: Thank you, Judge Bloch.

25 MR. STEPHEN KOHN: In regards to the 4-19 LER,

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1 were any deficiencies in the communication of that
2 document referenced in this SALP report?

3 WITNESS MATTHEWS: The LER may have been
4 referenced in this SALP report. Deficiencies, no.

5 MR. STEPHEN KOHN: And those deficiencies as
6 later evaluated, and those deficiencies which were later
7 evaluated by NRC, I believe they were given a Level 2
8 violation?

9 WITNESS MATTHEWS: I don't know what you're
10 speaking of.

11 MR. STEPHEN KOHN: Okay. Do you know that in
12 the modified NOV? Do you know what I'm talking about?

13 WITNESS MATTHEWS: Okay. But you -- I need a
14 more specific reference when you ask me --

15 MR. STEPHEN KOHN: Sure.

16 WITNESS MATTHEWS: -- a question like that.

17 MR. STEPHEN KOHN: Sure. And you know the
18 modified --

19 WITNESS MATTHEWS: I am familiar with the
20 modified NOV.

21 MR. STEPHEN KOHN: And that referenced
22 communications problems in these four documents that
23 you've testified about?

24 WITNESS MATTHEWS: Yes.

25 MR. STEPHEN KOHN: And a Level 2 violation was

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1 given for those communications problems?

2 MS. YOUNG: Are you asking about a severity
3 Level 2 violation?

4 MR. STEPHEN KOHN: Yes.

5 WITNESS MATTHEWS: Those were used as examples
6 supporting what we perceived to be a severity Level 2
7 problem at GPC.

8 MR. STEPHEN KOHN: Okay. And what does --

9 CHAIRMAN BLOCH: I want to know the
10 difference. He changed his language from "violation" to
11 "problem." Is there a reason to do that?

12 WITNESS MATTHEWS: I don't believe he said --
13 did you say "violations"?

14 MR. STEPHEN KOHN: I think I said
15 "deficiencies."

16 CHAIRMAN BLOCH: Sorry about that. Problem.
17 Go on.

18 MR. STEPHEN KOHN: To the best of your
19 knowledge, how frequent are severity Level 2 violations
20 given to utilities in the last four years?

21 WITNESS MATTHEWS: I don't have any
22 information on that.

23 MR. STEPHEN KOHN: Does anyone on the panel
24 know?

25 WITNESS SKINNER: No, I don't.

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1 MR. STEPHEN KOHN: Have you?

2 WITNESS HOOD: Can you repeat the question,
3 please?

4 MR. STEPHEN KOHN: I'm just wondering if you
5 know the frequency in which Level 2 violations have been
6 given to utilities.

7 WITNESS HOOD: I believe they're very rare. I
8 would not want to put a number on that.

9 MR. STEPHEN KOHN: And what does severity
10 Level 2 mean? What's the meaning of that?

11 WITNESS MATTHEWS: I can only speak in this
12 context. It was representative of this --

13 CHAIRMAN BLOCH: It's in the enforcement
14 policy of the NRC.

15 MR. STEPHEN KOHN: Okay. Now, my next
16 question is: At the time this SALP report was issued, did
17 anyone on the panel have access or review any of those
18 memos that Mr. Mosbaugh had filed with Mr. Larry Robinson
19 documenting concerns?

20 MS. YOUNG: Can you be more specific in terms
21 of which concerns, which memos?

22 MR. STEPHEN KOHN: He wrote --

23 BOARD EXAMINATION

24 CHAIRMAN BLOCH: Well, let's put it this way:
25 Did the SALP team inform itself of allegations pending

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1 with the Office of Investigation about Georgia Power?

2 WITNESS MATTHEWS: No. That's not something
3 the SALP team does. Excuse me. I ought to be very clear.
4 That's not something the SALP team did during that period.

5 MR. STEPHEN KOHN: Okay.

6 RECROSS-EXAMINATION

7 MR. STEPHEN KOHN: So, in other words, if
8 there were pending allegations with OI which impacted on
9 communications --

10 CHAIRMAN BLOCH: That's asked and answered.

11 MR. STEPHEN KOHN: Okay.

12 CHAIRMAN BLOCH: They said they didn't inform
13 themselves of it.

14 MR. STEPHEN KOHN: Okay.

15 WITNESS MATTHEWS: Let me make --

16 BOARD EXAMINATION

17 CHAIRMAN BLOCH: Are you all --

18 WITNESS MATTHEWS: Let me make something very
19 clear.

20 CHAIRMAN BLOCH: Yes?

21 WITNESS MATTHEWS: We are all members of the
22 staff. And while we put a particular set of guidance in
23 front of us when we do a SALP review, as part of our
24 collateral duties, our members have something known as
25 allegation review boards. And we participate in the

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1 decisions associated with the referral of allegations to
2 the Office of Investigations.

3 So it wouldn't be fair to say that SALP board
4 members or the supporting staff wouldn't be aware of
5 allegations.

6 CHAIRMAN BLOCH: But isn't it --

7 WITNESS MATTHEWS: We did not view allegations
8 as something that needed to be considered, their presence
9 or their details, in making determination on performance
10 because they're viewed to be at a very early stage of
11 review by the NRC. We can't give them any weight at that
12 point in time.

13 CHAIRMAN BLOCH: Until the allegation is
14 determined, you wouldn't consider it at all, would you?

15 WITNESS MATTHEWS: That's correct.

16 MR. STEPHEN KOHN: Okay.

17 RECROSS-EXAMINATION

18 MR. STEPHEN KOHN: And also in terms of the
19 scope of the analysis of the SALP, isn't it true that it's
20 primarily directly related to evaluating the operations of
21 the facility, as opposed to, say, evaluating how corporate
22 was being run?

23 WITNESS MATTHEWS: There's no limitation that
24 I know of with regard to a SALP.

25 WITNESS HOOD: That's -- I would not agree

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1 with that.

2 WITNESS MATTHEWS: You'd better clarify that,
3 Darl. You would not agree with me or you would not agree
4 with --

5 WITNESS HOOD: I'm sorry.

6 (Laughter.)

7 WITNESS HOOD: I would not agree with Mr.
8 Kohn's statement.

9 CHAIRMAN BLOCH: Mr. Kohn, how much more time
10 do you plan on the cross?

11 MR. STEPHEN KOHN: Very little, Your Honor.

12 CHAIRMAN BLOCH: Let's continue.

13 MR. STEPHEN KOHN: I'd like to move in
14 Intervenor Exhibit II-270.

15 CHAIRMAN BLOCH: Granted.

16 (Whereupon, the aforementioned
17 document, having previously been
18 marked for identification as
19 Intervenor's Exhibit Number II-270,
20 was received in evidence.)

21 CHAIRMAN BLOCH: That's the traveler, isn't
22 it?

23 MR. STEPHEN KOHN: That was the traveler that
24 was identified.

25 CHAIRMAN BLOCH: We had talked about that in

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1 the break.

2 MR. STEPHEN KOHN: One moment, Your Honor.

3 (Pause.)

4 MR. STEPHEN KOHN: Nothing further.

5 CHAIRMAN BLOCH: Take a 10-minute recess.

6 (Whereupon, the foregoing matter went off the

7 record at 3:05 p.m. and went back on the

8 record at 3:17 p.m.)

9 REDIRECT EXAMINATION

10 MS. YOUNG: Gentlemen, there was questioning
11 from Mr. Blake about information Mr. Mosbaugh may have had
12 available to him on April 19th. And you answered
13 questions assuming that Mr. Mosbaugh knew that the April
14 19th LER was trying to communication the same count as
15 April 9th and that he had information before him which
16 showed that as of April 9th there were not 18 consecutive
17 successful starts without problems or failures. Do you
18 recall that questioning?

19 WITNESS MATTHEWS: Yes, I do.

20 MS. YOUNG: I'm going to ask you to change the
21 subject of the sentence in the hypothesis. Instead of Mr.
22 Mosbaugh, what if Mr. Aufdenkampe had information before
23 him on that date? Would that change -- consistent with
24 Mr. Blake's hypothesis. Would that change the staff's
25 assessment of Mr. Aufdenkampe's performance on April 19th?

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1 WITNESS SKINNER: Yes, it would.

2 WITNESS MATTHEWS: Yes, it would.

3 WITNESS HOOD: The only change is --

4 CHAIRMAN BLOCH: Let the record reflect that

5 there were three simultaneous identical answers.

6 WITNESS HOOD: I beg to differ. There were

7 only two.

8 CHAIRMAN BLOCH: I thought I heard three.

9 Sorry about that.

10 MS. YOUNG: Mr. Hood?

11 WITNESS HOOD: The only thing --

12 MS. YOUNG: Can you respond?

13 WITNESS HOOD: The only --

14 MS. YOUNG: Would it change it, your

15 assessment of Mr. Aufdenkampe's performance?

16 WITNESS HOOD: The only change that you made

17 is the subject of the -- same premises, just different

18 subject?

19 MS. YOUNG: Yes, different person, different

20 individual.

21 WITNESS HOOD: The person. The answer would

22 be the same.

23 MS. YOUNG: And your answer would be? Would

24 it change your assessment of Mr. Aufdenkampe's

25 performance?

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1 WITNESS HOOD: Yes.

2 MS. YOUNG: What would that assessment be?
3 How would you characterize his actions on April 19th if
4 those assumptions turned to be proven; correct?

5 WITNESS MATTHEWS: If it's in this panel's
6 judgment, my view would be that it would involve
7 considerations of careless disregard.

8 MS. YOUNG: Mr. Skinner?

9 WITNESS SKINNER: That's the same answer for
10 me. I believe I also said that when the question was
11 asked with response to Mr. Mosbaugh, I said we would
12 consider the possible careless disregard. So the same
13 thing would apply for Mr. Aufdenkampe.

14 MS. YOUNG: Mr. Hood?

15 WITNESS HOOD: I agree with that answer.

16 MS. YOUNG: Does the panel have any opinion as
17 to whether either Mr. Mosbaugh or Mr. Aufdenkampe had
18 before them on April 19th sufficient information to know
19 whether the count as of April 9th was correct?

20 WITNESS HOOD: I'd like to address that
21 because I have a concern that I may possibly have
22 misspoken yesterday. I did not go back, and I have not
23 checked the transcript to see what I said. And I'm going
24 by memory.

25 But I may have made a statement to the effect

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1 that Mr. Mosbaugh & Mr. Aufdenkampe had the data that
2 had been prepared by Mr. Webb and possibly Mr. Beacher at
3 the time of the -- what's been called Call Number E.

4 On reflection, I do not believe that the
5 evidence is sufficiently clear that that was the case.
6 And that -- and, as I recall, the position of the Vogtle
7 coordinating group, we were unable to conclude that they
8 had the data in their hand at that time. And it may have
9 very well occurred at a later point shortly thereafter
10 what has been called Call B, as opposed to having it
11 during that call.

12 MS. YOUNG: Are you referring to a particular
13 transcript in this proceeding or exhibit in this
14 proceeding?

15 WITNESS HOOD: Do you mean when I made
16 reference to the transcript earlier? I was referring to
17 --

18 MS. YOUNG: The Call B, what transcript, this
19 Call B that you were referring to?

20 WITNESS HOOD: The last call on April 19th.

21 MS. YOUNG: What tape?

22 WITNESS HOOD: That would be Tape 58.

23 CHAIRMAN BLOCH: Just trying to get the record
24 clear. That was not a pop quiz.

25 MS. YOUNG: Does the panel have an opinion as

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1 to when, if at all, either Mr. Aufdenkampe or Mr. Mosbaugh
2 may have had what's been called the Webb list, GPC II-71,
3 in their possession?

4 WITNESS MATTHEWS: Yes, we do. And I have
5 refreshed my memory by again reviewing the Vogtle
6 coordinating group report. It was our determination at
7 that time that during the conversation with Mr. Shipman
8 that a complete list of DG start data was not available
9 during this conversation. And we make that note in our
10 evidentiary statements.

11 As additional support for that view, if you
12 look to GPC Exhibit 2, Tape Number 58, -- and I point you
13 to Page 34 -- the panel's view --

14 CHAIRMAN BLOCH: Could you read the relevant
15 portion of 34 so we'll know?

16 WITNESS MATTHEWS: Yeah, I will. We're down
17 on Line 14. And Aufdenkampe is saying, talking on the
18 phone, "I'm leaving now. Okay. Bye." Then there's an
19 "Inaudible," followed by Mr. Mosbaugh saying, "I can't
20 find enough starts so far."

21 "Aufdenkampe: Can you find 18?"

22 "Mosbaugh: No, not even close."

23 "Aufdenkampe: Odom got this."

24 "Mosbaugh: I'm not sure when he started."

25 In the panel's view, that is the first time we

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1 believe that information was available to Mr. Mosbaugh.
2 As to what information that was, I don't think the record
3 is clear. And we don't have evidence.

4 MS. YOUNG: Now, when you say "information was
5 available to Mr. Mosbaugh," do you mean that --

6 WITNESS MATTHEWS: I'm sorry. I need to be
7 more specific.

8 WITNESS SKINNER: List.

9 WITNESS MATTHEWS: We believe that's the first
10 time that a list of diesel generator starts may have been
11 in their possession.

12 MS. YOUNG: Do you know whether that's -- and
13 if it was in their possession, do you know whether that's
14 the first time they may have referred to a list?

15 WITNESS MATTHEWS: I believe it's the first
16 time that they may have referred to a list.

17 MS. YOUNG: And when did this discussion that
18 you pointed to on Transcript Page 34 occur? Was it
19 before, after, or during the call with Mr. Shipman in late
20 afternoon?

21 WITNESS MATTHEWS: We have -- I can't find the
22 page right now, but there was a point preceding this point
23 on the transcript where they ended the call with Mr.
24 Shipman. I believe it's on Page 32. Sorry. It's
25 approximately the center of Page 33.

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1 And that's the last time we have Mr. Shipman
2 talking. And it's followed by Swartzwelder saying, "All
3 right. Bye, bye."

4 MS. YOUNG: Now, when you indicated to Mr.
5 Blake that there was something more that Mr. Mosbaugh
6 should have done on April 19th, if it turns out the record
7 supports the conclusion that they had a listing of starts
8 after they got off the phone with Mr. Shipman, after the
9 site had given approval of the LER language, what's the
10 staff expectation of what Mr. Mosbaugh or Mr. Aufdenkampe
11 should have done after that point?

12 WITNESS MATTHEWS: I can give you my
13 expectation. My expectation would be that at the time
14 that they came to that realization, that either or both of
15 them should have re-initiated a conversation with those in
16 Birmingham that were responsible for issuing the
17 communication and making them aware that the communication
18 as it was stated was either unclear or that they couldn't
19 support the information contained therein.

20 BOARD EXAMINATION

21 CHAIRMAN BLOCH: To make the record clear,
22 when you say "either or both," the individuals you're
23 referring to are?

24 WITNESS MATTHEWS: The question was with
25 regard to Mr. Mosbaugh or Mr. Aufdenkampe.

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REDIRECT EXAMINATION

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MS. YOUNG: Do you recall who had lead responsibility for the LER start count for GPC at the site?

WITNESS MATTHEWS: I believe Mr. Aufdenkampe did.

MS. YOUNG: Would it have been reasonable for either Mr. Mosbaugh or Mr. Aufdenkampe after looking at the list which has been marked in this proceeding as GPC II-71 to have checked plant records to verify the accuracy of that information?

WITNESS MATTHEWS: Would you restate that question again?

MS. YOUNG: Would it have been reasonable for either Mr. Aufdenkampe or Mr. Mosbaugh to have looked at plant records to verify the accuracy of the information that was collected in the Webb list, GPC II-71?

WITNESS MATTHEWS: Prior to making any further notification?

MS. YOUNG: That's a different question.

WITNESS MATTHEWS: Okay.

MS. YOUNG: But you can assume that.

WITNESS MATTHEWS: Well, but I was -- I know that a review of plant records did follow the development of this list. So if you're talking about

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1 contemporaneously with having this information first come
2 in their hands, yes, I think it would be reasonable for
3 them to check plant records.

4 But I think at the same time I would think
5 that this list would have provided sufficient information
6 for them to recognize that there was a potential problem
7 with the communication and take an action at that point to
8 at least put that communication on hold until such a check
9 of plant records could be conducted.

10 MS. YOUNG: And if the language of the -- did
11 anyone else want to supplement his answer? And if the
12 language of the LER could reasonably be construed as
13 giving a start count through April 19th, was there a basis
14 for Mr. Mosbaugh on April 19th to have believed there was
15 an error in the start count in the LER based on the list?

16 WITNESS MATTHEWS: I believe there was a basis
17 to believe there might be an error.

18 MS. YOUNG: Why?

19 WITNESS MATTHEWS: Well, one point is that the
20 list ends before the 1B diesel generator on 4-18. And
21 they were sitting on 4-19. Wait. I might be asking the
22 other question you asked as to whether -- well, I got
23 confused. Ask the question again, please.

24 MS. YOUNG: If Mr. Mosbaugh or Mr. Aufdenkampe
25 had been of the opinion that the LER was trying to convey

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1 a start count to April 19th, 1990, would the Webb list,
2 GPC II-71, have provided them with a basis for determining
3 the accuracy of that start count for that period?

4 WITNESS MATTHEWS: No, I don't believe it
5 would have.

6 MS. YOUNG: Does anyone else on the panel have
7 a reaction to that?

8 WITNESS SKINNER: I agree with that statement
9 because the Webb list, as I understand it, as it was first
10 received had no indications on it other than being a list
11 of times and dates associated with start.

12 The information that is in the right-hand side
13 of the list was not put on there until subsequent to the
14 -- Mr. Aufdenkampe and Mr. Mosbaugh had received it.

15 MS. YOUNG: Let me understand your question --
16 your answer. Excuse me. Got lost in trying to find the
17 document. Is it your statement or your understanding of
18 the testimony in this proceeding that the two notations
19 about trips on 3-22 and 3-23 on the 1B diesel were not on
20 the original Webb list?

21 WITNESS SKINNER: That was my understanding
22 when I just answered this statement, yes.

23 MS. YOUNG: They were or were not?

24 WITNESS SKINNER: Were not.

25 MS. YOUNG: Are they original Xerox notations

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1 in the document you have before you?

2 WITNESS SKINNER: Yes, they are.

3 MS. YOUNG: And are there notations in red and
4 black ink?

5 WITNESS SKINNER: Yes. They were probably on
6 there then.

7 MS. YOUNG: And does anyone else --

8 WITNESS SKINNER: I say they were probably on
9 there then.

10 MS. YOUNG: So the original list had an
11 indication of two trips?

12 WITNESS SKINNER: That's correct.

13 MS. YOUNG: Does that change the answer to the
14 question I asked you previously?

15 WITNESS SKINNER: Yes, that would change my
16 answer.

17 MS. YOUNG: So what would your answer be in
18 terms of whether that list would have given information as
19 to the accuracy of account through April 19th --

20 WITNESS SKINNER: Through April --

21 MS. YOUNG: -- consistent with the LER?

22 WITNESS SKINNER: I'd have to look at that LER
23 again now.

24 WITNESS MATTHEWS: Can somebody point us to an
25 exhibit record?

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1 MS. YOUNG: GPC II-14, GPC II-14. Does anyone
2 have an extra copy of that? Thank you.

3 WITNESS SKINNER: Okay. I've read it.

4 MS. YOUNG: Okay. Can you respond to the
5 question?

6 WITNESS SKINNER: The response to that
7 question would be that if he had the list at that time,
8 that would not call into question the statement in the
9 LER.

10 MS. YOUNG: Does anyone else on the panel have
11 a response different or --

12 BOARD EXAMINATION

13 CHAIRMAN BLOCH: Well, could you just explain
14 that so we'll understand it?

15 WITNESS SKINNER: Yes, sir. Yes, sir. The
16 exhibit, the Webb list, II --

17 MS. YOUNG: Seventy-one.

18 WITNESS SKINNER: -- 71, shows an indication
19 that on 3-23 at 17:30 was the last indication of a trip on
20 low jacket water pressure turbine lube oil, low pressure
21 condition. And, counting down up through the remainder of
22 the list, there is 18 starts indicated on the list.

23 CHAIRMAN BLOCH: That is 18 successful starts
24 without problems or failures?

25 WITNESS SKINNER: Without anything being

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1 indicated whether there was a problem or failure or not.
2 And the LER basically says that subsequent to the test
3 program, DG 1A and 1B have been started at least 18 times
4 each and no failures or problems have occurred during any
5 of these starts.

6 REDIRECT EXAMINATION

7 MS. YOUNG: Do the other members of the panel
8 agree?

9 WITNESS MATTHEWS: I do, but I'd like to say
10 that I still believe that there was a potential concern,
11 even with the 4-19 wording, that might have been raised
12 due to the uncertainty in his mind with regard to the
13 definition of the comprehensive test program because of
14 the wording in that same LER said "subsequent to this test
15 program" and that's not identified on, as I understand it,
16 the Xerox-only version of the so-called Webb list.

17 So I think there still would have been a basis
18 represented by the Webb list to question the validity of
19 this statement given the uncertainty of the beginning of
20 the test program.

21 MS. YOUNG: Mr. Hood? Mr. Hood?

22 WITNESS HOOD: Yes. You still have to know
23 when you wanted to start counting from that list.

24 MS. YOUNG: Well, could he tell from the Webb
25 list that the count starting after the comprehensive test

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1 program was incorrect as stated in the LER?

2 WITNESS SKINNER: He could not tell unless the
3 identification of the comprehensive test program was in
4 some form or fashion identified on here. And it is not.

5 MS. YOUNG: And when Mr. Kohn asked you about
6 the basis for why the NRC identified a performance
7 deficiency regarding Mr. Mosbaugh's failure to clarify the
8 term "CTP," had the staff considered whether Mr. Mosbaugh
9 had sufficient information on April 19th to know when the
10 comprehensive test program began?

11 WITNESS MATTHEWS: Yes. And we don't believe
12 that he did have sufficient information to know when the
13 comprehensive test program began.

14 MS. YOUNG: And do you believe he took
15 sufficient efforts on April 19th or anyone else in GPC
16 took sufficient efforts on April 19th to establish that
17 beginning point for the count?

18 WITNESS SKINNER: No.

19 WITNESS HOOD: No. No. And if I gave
20 comments to the contrary yesterday, I would like to have
21 --

22 BOARD EXAMINATION

23 CHAIRMAN BLOCH: You'd like to amend them?

24 WITNESS HOOD: Understand that this supersedes
25 that.

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1 CHAIRMAN BLOCH: May I ask: Aren't we in the
2 realm here of interpreting the phrase "careless
3 disregard"? Is that part of what we're doing here?

4 WITNESS MATTHEWS: In what regard?

5 CHAIRMAN BLOCH: To decide whether Mr.
6 Mosbaugh was in careless disregard, wouldn't you have to
7 know not only what careless is, but what disregard is?

8 WITNESS MATTHEWS: Well, that has become a
9 term, you know, that falls in the category of willfulness,
10 but it involves the concept of having -- in our view, we
11 viewed it as having information within your possession
12 that you believe would either not support the statements
13 being made or would contradict the statements being made
14 with some certainty and failing in a careless way or an
15 indifferent way to act on that information.

16 Maybe we are. We didn't find careless
17 disregard in this instance because we didn't believe that
18 the information was -- I shouldn't say "information." We
19 don't believe a list was available or the definition of
20 comprehensive test program was sufficiently well-defined
21 for Mr. Mosbaugh to be viewed as having information that
22 either failed to support or contradicted what was being
23 developed.

24 CHAIRMAN BLOCH: So you did not find careless
25 disregard, something less than that?

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1 WITNESS MATTHEWS: That's right.

2 MS. YOUNG: The staff has no further
3 questions. Thank you, gentlemen.

4 CHAIRMAN BLOCH: Mr. Kohn?

5 MR. STEPHEN KOHN: This is for Mr. Matthews
6 and then for the rest of the panel.

7 CHAIRMAN BLOCH: You might want to be closer
8 to the microphone.

9 MR. STEPHEN KOHN: Yes. This is for Mr.
10 Matthews, then the rest of the panel to comment on.

11 RE-CROSS-EXAMINATION

12 MR. STEPHEN KOHN: After 4-19-90 which
13 employee of Plant Vogtle was most instrumental in calling
14 to the NRC's attention the problems with the LER and the
15 COAR, to the best of your knowledge?

16 WITNESS MATTHEWS: In my view, that would be
17 Mr. Mosbaugh.

18 MR. STEPHEN KOHN: And after 4-19-90 which
19 employee of Plant Vogtle took the most initiative and was
20 most responsible for calling internally within the Georgia
21 Power structure potential problems with the 4-9 COAR
22 letter and the 4-19 LER?

23 MS. YOUNG: Judge Bloch, I'm going to object
24 to that question only because I think this area was
25 covered yesterday, but --

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1 CHAIRMAN BLOCH: Sustained. It was asked and
2 answered.

3 MR. STEPHEN KOHN: One moment, Your Honor.
4 (Pause.)

5 CHAIRMAN BLOCH: Mr. Kohn, we remember that.
6 This is not a jury presentation.

7 MR. STEPHEN KOHN: Okay. Mr. Matthews, in
8 regards to the hypothetical that Mr. Blake asked you --
9 and, if you remember, Mitzi Young took Allen's name out of
10 it and added Mr. Aufdenkampe's name into that equation.

11 WITNESS MATTHEWS: Yes.

12 MR. STEPHEN KOHN: And then your conclusion
13 was the same on the basis of that hypothetical?

14 WITNESS MATTHEWS: Yes.

15 MR. STEPHEN KOHN: Okay. Would that also go
16 for if you took another name out and added another name on
17 the basis of those two facts, say like Mr. Shipman? Would
18 you get the same result?

19 WITNESS MATTHEWS: I'm hesitating only in that
20 I'm thinking the degree to which the circumstances
21 surrounding that hypothetical were contributory to my
22 answer. So I have to give some thought.

23 MR. BLAKE: I want a basis for that
24 hypothetical if he extends it to other names or I think
25 it's wholly inappropriate.

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1 CHAIRMAN BLOCH: So if you can provide a basis
2 for Mr. Shipman, then you can ask about Mr. Shipman.

3 MR. STEPHEN KOHN: Sure. The basis is Tape
4 57.

5 MR. BLAKE: You're going to get a basis now
6 for Mr. Shipman having had the Webb list in front of him
7 from Tape 57?

8 CHAIRMAN BLOCH: No. I think that's not what
9 he's trying to get now. He's going to try to use the tape
10 to show that Mr. Shipman knew that there were false
11 statements in the --

12 MR. BLAKE: Well, my hypothetical was really
13 quite well-defined. It was on the basis of --

14 MR. STEPHEN KOHN: Your Honor, I think the
15 record stands for itself. I'll withdraw the question. I
16 think this stuff, again, is just for argument. So thank
17 you.

18 CHAIRMAN BLOCH: Thank you. Mr. Blake?

19 MR. BLAKE: Yes, I do, but I need to get my
20 book back that I gave to the --

21 CHAIRMAN BLOCH: Let the record show that the
22 book contained transcripts of tapes.

23 MR. BLAKE: Actually, it was the LER exhibit
24 that I got.

25 CHAIRMAN BLOCH: Oh, was it? Okay.

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1 MR. BLAKE: It also includes Tape 58.

2 REDIRECT EXAMINATION

3 MR. BLAKE: Do you have a copy of Tape 58?

4 WITNESS MATTHEWS: Not in front of me, no.

5 Oh, excuse me. Yes, I do. I thought I had 57.

6 MR. BLAKE: Now, in response to Ms. Young's
7 questions, you looked at Transcript Page 38 from Tape 58.

8 MS. YOUNG: I think it was 34, but I could be
9 wrong.

10 WITNESS MATTHEWS: And I believe it was Page
11 37.

12 MR. BLAKE: Okay. Well, it was in these pages
13 where at least you believe the coordinating group had made
14 the determination that Mr. Mosbaugh and Mr. Aufdenkampe
15 would have had the Webb list in front of them.

16 WITNESS MATTHEWS: Let me correct. It was
17 Page 34 that I was referring to.

18 MR. BLAKE: Oh, I was hoping Ms. Young might
19 be wrong, but --

20 WITNESS MATTHEWS: No.

21 MR. BLAKE: Okay. Thereafter -- and you were
22 asked based on the hypothetical whether or not it could
23 have altered your view with regard to Mr. Aufdenkampe, you
24 might have reassessed your determination with regard to
25 Mr. Aufdenkampe. And you said yes.

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1 I want to know if you look at Page 39, after
2 Mr. Aufdenkampe and Mr. Mosbaugh are discussing this list
3 and Mr. Aufdenkampe says to Mr. Mosbaugh, "Where do you
4 want to go with this, Allen?"; Mr. Mosbaugh says, "There's
5 no place to go with it," whether or not you also would
6 have taken that into account with regard to assessing
7 responsibility to Mr. Aufdenkampe.

8 WITNESS SKINNER: Yes. As we did with all of
9 the determinations we made, I believe we took into account
10 all evidence that we had available to us. And given that
11 this was available to us and would be available to us in
12 this hypothetical reevaluation, we would take that into
13 account.

14 MR. BLAKE: Same answer, Mr. Skinner?

15 WITNESS SKINNER: Yes.

16 MR. BLAKE: Mr. Hood?

17 WITNESS HOOD: Yes.

18 CHAIRMAN BLOCH: The statement was a statement
19 of Mr. Mosbaugh saying "There's no place to go with this"?

20 WITNESS MATTHEWS: I believe he was making
21 reference to that was the response to Mr. Aufdenkampe's
22 question "Where do you want to go with this, Allen?" I
23 think he was asking me with regard to Mr. Aufdenkampe.

24 BOARD EXAMINATION

25 CHAIRMAN BLOCH: So wouldn't you also with

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1 respect to Mr. Mosbaugh have to examine whether he had a
2 reasonable basis for the belief that there was no place to
3 go with this?

4 WITNESS MATTHEWS: And I believe we did.

5 CHAIRMAN BLOCH: Okay.

6 MR. BLAKE: No more.

7 MR. STEPHEN KOHN: And just a little. While
8 we're on Page 39, who can resist?

9 MR. BLAKE: You can only resist if it's within
10 the scope.

11 MR. STEPHEN KOHN: Yes.

12 RE-CROSS-EXAMINATION

13 MR. STEPHEN KOHN: If you look at Lines 14
14 through 16, following up on this, which Mr. Aufdenkampe is
15 now in my opinion justifying the contents of the LER. On
16 this, which Mr. Aufdenkampe is now, in my opinion,
17 justifying the contents of the LER and referencing the
18 McCoy call to Brockman.

19 Based on this statement didn't Mr. Mosbaugh
20 have a reasonable belief that corporate had information,
21 and believe the LER to be correct?

22 A I believe what he had was somebody stating
23 that there was an argument that exists on why it was
24 correct, and the recitation, I guess, I would put it
25 second- or third-hand that a call had been made to a

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1 representative from the NRC, but I think I addressed that
2 in my previous testimony, that in my view that doesn't
3 constitute -- I don't know what word you used --
4 alleviating responsibility or constitute a sufficient
5 reassurance that the communication had been successfully
6 made to the corporate level.

7 Q And it didn't stop Mr. Mosbaugh from following
8 up on at this point a hunch, that there was a problem, and
9 adequately documenting it.

10 Isn't that true?

11 MS. YOUNG: I am going to object to the
12 characterization "hunch."

13 MR. STEPHEN KOHN: Nothing further.

14 BOARD EXAMINATION

15 CHAIRMAN BLOCH: Mr. Matthews, I rather like
16 the high standard you are setting for Mr. Mosbaugh. Do
17 you know if it is realistic in the world to expect that
18 people will not only raise an issue, but keep at it with
19 such tenacity that actually something is likely to be done
20 about it?

21 There might be a comparison that you might
22 draw to the world in which that standard might not be
23 generally applicable, but I don't believe that the
24 environment that we are in, that we are permitted maybe
25 the same flexibility as others might be permitted in terms

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1 of their standards.

2 THE WITNESS: The people in this field must
3 act in a way that is at a higher level than people in
4 other fields.

5 I think it is expected, and by virtue of how I
6 carry that responsibility out, I think it is demanded of
7 us.

8 CHAIRMAN BLOCH: Mr. Blake?

9 MR. BLAKE: No.

10 CHAIRMAN BLOCH: Ms. Young?

11 MS. YOUNG: Gentleman, you have been referred
12 to a lot of sections of tape 58.

13 I want to ask you, in reaching conclusions
14 with the Vogtle coordinating group, did you fully
15 consider, in determining whether there was either
16 deliberate intent or failure to perform in a way which NRC
17 would expect with respect to the accuracy of information
18 submitted to the NRC, did you consider all that transpired
19 on tape 58, including the conversation with Mr. Cash?

20 MR. SKINNER: Yes.

21 MR. MATTHEWS: Yes.

22 MR. HOOD: Yes.

23 MS. YOUNG: No further questions.

24 CHAIRMAN BLOCH: Mr. Kohn?

25 MR. STEPHEN KOHN: Your Honor, just one thing,

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1 which is just kind of a carry over. Mr. Matthews, in
2 responding to the last question I think, from the Board,
3 was comparing Mr. Mosbaugh's conduct and other
4 individual's conducts and the quote he used was, "how I
5 carry out."

6 Again, using as his point of reference his
7 subjective standard --

8 CHAIRMAN BLOCH: Should you be looking to me
9 when you should be asking questions?

10 MR. STEPHEN KOHN: No. No. No. My question
11 is it is either that they should strike all testimony
12 where he talks subjectively about his own expectation of
13 his own performance, which I think is fine, or allow me to
14 pursue my line of questioning into that, which I attempted
15 yesterday, regarding the types of pressures he may be
16 under, and comparing that to Mr. Mosbaugh.

17 I just don't think it is an appropriate way to
18 present, "Well, if I do this," or "I am expected to do
19 this in my position. Therefore others -- "

20 CHAIRMAN BLOCH: So you didn't object at the
21 time the question was asked. It is now up to you on cross
22 examination to clarify.

23 MR. STEPHEN KOHN: That is correct. I brought
24 up the very same issue yesterday, but I wasn't allowed to.

25 CHAIRMAN BLOCH: I am not really precisely

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1 certain of what the ruling was yesterday. What are you
2 recalling it to be?

3 MR. STEPHEN KOHN: Okay. When I ask the
4 question I think you will remember.

5 CHAIRMAN BLOCH: Okay.

6 BY MR. STEPHEN KOHN:

7 Q Mr. Matthews, have you ever been called into a
8 meeting with your NRC superiors in which you were accused
9 of backstabbing?

10 CHAIRMAN BLOCH: Okay. Now, that was not
11 allowed.

12 MR. STEPHEN KOHN: Yes.

13 CHAIRMAN BLOCH: I still will not allow that,
14 but you can ask questions about the affect of something
15 like that in the industry, whether the standard is
16 affected by that.

17 CROSS-EXAMINATION

18 BY MR. STEPHEN KOHN:

19 Q Okay. Mr. Matthews, have you ever studied the
20 chilling effect that harassment of an employee may have on
21 that employee's willingness to raise concerns?

22 A I don't know what "studied" means.

23 Q Have you ever looked into that? The impact of
24 what is known as the chilling effect on employees.

25 A These are issues that I deal with on a regular

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1 basis.

2 Q Okay, and the NRC has a concern that certain
3 management practices may create a chilling effect on the
4 willingness of employees to raise concerns?

5 A Yes.

6 Q And can you just tell me what is your
7 understanding of the chilling effect, and why that might
8 be a regulatory concern?

9 A I think you are getting into areas that are
10 way beyond my area of expertise.

11 MS. YOUNG: Judge Bloch, I object. This is
12 not even what Mr. Kohn purported to represent in the scope
13 of his inquiry.

14 CHAIRMAN BLOCH: Why is this within the scope
15 of what was asked immediately before?

16 MR. STEPHEN KOHN: Because, Your Honor, I
17 think there is a question that you asked posing, "Is this
18 the standard you think for all employees?" and the witness
19 said, "Well, in the nuclear industry I would expect this
20 standard, but maybe not in all of its contexts."

21 So, although there might be a standard of --

22 BOARD EXAMINATION

23 CHAIRMAN BLOCH: Mr. Matthews, within the
24 scope of the standard you would apply to individuals in
25 the industry, what play, if any, would you give to the

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1 chilling effect that might occur through harassment?

2 THE WITNESS: I think the concept of a
3 chilling effect is one we focus on in order to foster an
4 environment where people bring forward their concerns with
5 as little hesitation as possible.

6 I think we view that as our responsibility to
7 ensure that the industry is aware of our concerns in that
8 regard, and our expectations, and I use that word
9 purposefully, foster, that kind of environment.

10 However, the presence of a chilling
11 environment in my view doesn't alleviate people from
12 bringing their concerns forward irrespective of the
13 existence of this chilling effect, that they still have
14 that obligation.

15 We are just trying to ensure that those
16 environments are as unchilled as possible.

17 CHAIRMAN BLOCH: If I understand correctly,
18 you would find that there was a failure to act, but you
19 wouldn't consider it on the scale of willful disregard.

20 Is that correct?

21 THE WITNESS: Certainly.

22 CHAIRMAN BLOCH: So there is a concern about
23 violations in chilling people's behavior, on the one hand.
24 Right?

25 THE WITNESS: Right.

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1 CHAIRMAN BLOCH: But you would not consider
2 that a complete excuse for not bringing forward important
3 safety information on the other hand?

4 THE WITNESS: That is correct.

5 CHAIRMAN BLOCH: Is there something else to
6 this subject that you feel is relevant?

7 MR. STEPHEN KOHN: Yes. Isn't the flip side
8 also the case, that it is the NRC's experience that where
9 there is a chilling effect because of certain management
10 harassment or conduct, in fact, employees are more
11 hesitant to raise concerns.

12 MR. BLAKE: I want a basis for harassment,
13 etc., used in that example. I don't know what the
14 relevance is to this proceeding.

15 CHAIRMAN BLOCH: The way you have asked it, it
16 is actually within the definitely of what you have asked.
17 If there is a chilling effect people are more reluctant to
18 come forward.

19 So what are you really asking?

20 MR. STEPHEN KOHN: Nothing further.

21 CHAIRMAN BLOCH: Mr. Blake? Ms. Young?

22 REDIRECT EXAMINATION

23 BY MS. YOUNG:

24 Q Mr. Matthews, in giving your answer to Judge
25 Bloch about the standard that you would expect to see in

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1 the nuclear industry, is that standard affected in any way
2 by the position of the individual who has the concern?

3 A Oh, I think it definitely would be affected by
4 the position of the individual.

5 Q And was Mr. Mosbaugh in a senior position at
6 the Vogtle site?

7 A Yes. He was.

8 Q And did Mr. Mosbaugh's senior position play a
9 role, in your judgment, as to what his actions should have
10 been on April 19th?

11 A His position played a role in our
12 determinations. You know, position not exclusively, his
13 position and the responsibilities afforded to that
14 position played a role.

15 In other words -- I am trying to clarify -- if
16 he had been in a similarly high level position, but maybe
17 been out of the line organization, it may not have been as
18 significant a concern.

19 MS. YOUNG: No further questions.

20 CHAIRMAN BLOCH: Mr. Blake?

21 MR. BLAKE: Nothing.

22 CHAIRMAN BLOCH: It is my pleasure to thank
23 the witnesses for appearing before us and to excuse the
24 panel.

25 MR. SKINNER: Thank you.

1 (Whereupon, the witness panel was excused.)

2 MR. BLAKE: Before we go on to the next one,
3 before we go -- there is a topic close to this point I
4 want to at least get in the record.

5 I want the record to reflect that we have
6 confirmed that in fact, the SALP document, despite the
7 representations from counsel to the contrary, were in the
8 documents that were made available in discovery. The so
9 called "Wall."

10 We have not confirmed with respect to the
11 second SALP document, but we have indeed the one which you
12 allowed in the record, Judge Bloch.

13 MR. STEPHEN KOHN: If that is the case then I
14 apologize and stand corrected. We didn't see any Bates
15 numbers on those, and that has generally been our
16 indication of whether it was produced or not.

17 CHAIRMAN BLOCH: Is it the practice of Georgia
18 Power not to put numbers on NRC documents?

19 CHAIRMAN BLOCH: No. In fact, the Bates
20 numbers are 1589 through 1621, but the copy that we
21 happened to have had here, because we just asked for it as
22 a result of this cross, happened to come from a spot which
23 wasn't in the Wall.

24 CHAIRMAN BLOCH: Okay. So, we are going to
25 take a ten minute recess and at the conclusion of the

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1 recess we will call the next panel.

2 (Whereupon, a 10 minute recess was taken at
3 4:00 p.m.)

4 CHAIRMAN BLOCH: Could you each identify
5 yourselves for the record, using the microphones.

6 MR. ZIMMERMAN: My name is Willie P.
7 Zimmerman. I am the associate director for projects in
8 the NRC's office of nuclear reactor regulation.

9 MR. REYES: My name is Luis Reyes, I am the
10 deputy regional administrator for the NRC office in
11 Atlanta, Georgia.

12 Whereupon,

13 ROY P. ZIMMERMAN

14 and

15 LUIS A. REYES

16 called as a witnesses, having been first duly sworn, were
17 examined and testified as will follow.

18 CHAIRMAN BLOCH: I want to note for the record
19 that I was pleased to have read the special compliments to
20 Mr. Reyes in the lobby.

21 I think the record should reflect that I have
22 read that biography so that everything that I know about
23 Mr. Reyes is disclosed on the record.

24 MR. REYES: Thank you.

25 MR. STEPHEN KOHN: Your Honor, if I may just

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1 address one procedural matter?

2 CHAIRMAN BLOCH: Yes. Please do.

3 MR. STEPHEN KOHN: We have provided to the
4 parties our pre-file testimony -- and to the Board -- our
5 pre-file testimony for Mr. Marvin Hobby, and we would
6 intend to make him available for cross-examination
7 tomorrow by telephone, and I just wanted to, in other
8 words, in terms of who we are calling or what we were
9 doing tomorrow, I just want to call that to the Board's
10 attention.

11 CHAIRMAN BLOCH: It is my understanding that
12 this portion of the case will conclude after this panel
13 and the calling of Mr. Hobby.

14 Is that correct?

15 MR. BLAKE: I don't know how you ruled on Mr.
16 Hobby so quickly and included him.

17 CHAIRMAN BLOCH: I am sorry. I thought from -
18 - in light of what the intervenor said -- that there was
19 an understanding that that was what was going to happen.

20 MR. BLAKE: No. Not on my part. I will
21 oppose this late call of Mr. Hobby. I have a number of
22 reasons for that.

23 I don't know whether you want to hear
24 arguments on it at this juncture or not.

25 CHAIRMAN BLOCH: I think probably we ought to

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1 hear them now because if there is going to be a witness
2 tomorrow, it is probably appropriate to find out if it
3 will happen now.

4 MR. BLAKE: I think there have been a variety
5 of deadlines come and go. I think there was on the record
6 information from the Board, and a statement from
7 intervenor, that his case rested.

8 There have been no indications, as far as I
9 know, of calling Mr. Hobby. I didn't even remember his
10 name in recent days, weeks, or months, with respect to his
11 being a prospective witness.

12 If it is something prompted by the cross-
13 examination of the NRC staff witnesses, which is the only
14 thing that has taken place over the last couple of days, I
15 guess I would like to know what it is, because I don't
16 know what the good cause is, and maybe there is something
17 there that I haven't taken into account.

18 It certainly can't be their pre-file
19 testimony. That has been available to us, literally, for
20 months. It certainly isn't something that came up in Mr.
21 Kohn's cross.

22 CHAIRMAN BLOCH: Why don't we find out before
23 we argue about whether there is cause. What is the cause?

24 MR. STEPHEN KOHN: Your Honor, this testimony
25 is being offered in rebuttal, and is specifically -- I

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1 think Georgia Power has tried to create an inference in
2 their questioning of the witnesses, beginning with Mr.
3 Hairston, but specifically, and also with Mr. Matthews,
4 that somehow in 1988 when Sonopco came in, there were some
5 communications problems that they were working on to fix,
6 and that they tried to create an impression that in start-
7 up and construction there were problems, and they were
8 working through them, and Bockhold, one of their team, was
9 correcting those problems and making things better in the
10 '88, '89, '90 time period leading up to 1990.

11 I think that is all in --

12 CHAIRMAN BLOCH: Now, wait a minute. The
13 cause has to be related to the last panel.

14 MR. STEPHEN KOHN: Yes. I think when Mr.
15 Matthews was cross-examined by Georgia Power on the
16 cavalier cowboy meeting, and Mr. Bockhold, I think there
17 was a clear inference -- I don't have the testimony in
18 front of me -- that some of these concerns were with
19 Georgia Power and pre-dated or did not concern Mr.
20 Bockhold, and --

21 CHAIRMAN BLOCH: I don't remember anything
22 like that. What I remember Mr. Matthews testifying was
23 that he started bringing about communication problems --
24 discussions about communications problems -- sometime in
25 1989 with Georgia Power.

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1 I don't recall that he testified that there
2 was anything going on that was correcting communications
3 problems in 1989.

4 I don't recall anything about that.

5 MR. STEPHEN KOHN: Well, I would have to look
6 at the record, and I don't have --

7 MR. BLAKE: I think that he ought to be
8 allowed to take a look at the record and improve his
9 argument if he can, but as a general matter, the idea that
10 this document would rebut Mr. Matthews' views of Mr.
11 Bockhold I think is pretty preposterous.

12 I can't see that Mr. Matthews could be colored
13 as a big supporter of Mr. Bockhold.

14 MR. STEPHEN KOHN: No. It is not that. I
15 think it is to rebut Georgia Power's inference, from their
16 questioning, that these problems were systemic.

17 CHAIRMAN BLOCH: You have to get more specific
18 tomorrow morning.

19 MR. STEPHEN KOHN: I just have to look at the
20 transcript.

21 CHAIRMAN BLOCH: In the morning, if you get
22 more specific, you may have cause, but right now it
23 doesn't sound that way.

24 MR. STEPHEN KOHN: Okay. I just wanted to let
25 the Board know, and we have had some information

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1 discussions with Georgia Power, but we haven't had an
2 opportunity yet for NRC staff, there are about -- there
3 are 10 other procedural matters we wanted to address with
4 the Board before the record formally closed.

5 CHAIRMAN BLOCH: So why don't we plan to do
6 that at the end of this panel or if we call Mr. Hobby,
7 after his testimony, but we will do it tomorrow.

8 MR. STEPHEN KOHN: Okay. Thank you, Your
9 Honor.

10 MR. BARTH: The staff will be allowed to
11 comment tomorrow too, Your Honor, on the Hobby?

12 CHAIRMAN BLOCH: No. Not at all. Never. It
13 depends on whether it is going to be you or Ms. Young, Mr.
14 Barth.

15 Would you like to begin with the witnesses?

16 MR. BARTH: No. I would like to go with Hobby
17 tomorrow when we bring it up again.

18 CHAIRMAN BLOCH: No. We will permit the staff
19 to participate, of course.

20 MS. YOUNG: May the staff proceed then?

21 DIRECT EXAMINATION

22 BY MS. YOUNG:

23 Q Gentlemen, do you have before you a document
24 entitled, "Testimony of Roy P. Zimmerman and Luis A. Reyes
25 on the character and integrity contention?"

1 WITNESS ZIMMERMAN: Yes. I do.

2 WITNESS REYES: Yes. I do.

3 Q And was this document either prepared by you
4 or under your direction and supervision?

5 WITNESS ZIMMERMAN: Yes.

6 WITNESS REYES: Yes.

7 Q And is it consisting of seven pages with
8 attachment A as the professional qualifications of Roy
9 Zimmerman, and attachment B as professional qualifications
10 of Luis Reyes?

11 WITNESS ZIMMERMAN: Yes.

12 WITNESS REYES: Yes.

13 Q And do you have any corrections you would like
14 to make to these documents?

15 CHAIRMAN BLOCH: I need attachment A. I have
16 attachment B.

17 MR. BLAKE: I have the same problem.

18 MS. YOUNG: Cover letter?

19 CHAIRMAN BLOCH: Well, I don't have it with
20 it. Thank you. Ms. Young, if you want, you can use this
21 now and then I can have it later?

22 MS. YOUNG: No. I was trying to get more made
23 for the Board, so that you would have the whole thing in
24 one piece.

25 CHAIRMAN BLOCH: We are okay with that one

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1 copy of A. Some of us are clerically still adept.

2 BY MS. YOUNG:

3 Q Gentlemen, do you have any corrections you
4 want to make to that document and attachments?

5 WITNESS ZIMMERMAN: No.

6 WITNESS REYES: Not at this time.

7 Q And is the document with the attachments true
8 and correct to the best of your knowledge and belief?

9 WITNESS ZIMMERMAN: Yes.

10 WITNESS REYES: Yes.

11 MS. YOUNG: Judge Bloch, I would like to have
12 marked for the record attachment A as Staff II-52.

13 CHAIRMAN BLOCH: Granted.

14 (Whereupon, the above referenced
15 document was marked as Staff's
16 Exhibit No. II-52 for
17 identification.)

18 MS. YOUNG: And attachment B marked as Staff
19 II-53.

20 CHAIRMAN BLOCH: Granted.

21 (Whereupon, the above referenced
22 document was marked as Staff's
23 Exhibit No. II-53 for
24 identification.)

25 MS. YOUNG: And I move that the testimony of

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1 this panel, with the appended attachments, be received
2 into evidence and bound into the transcript as if read.

3 MR. MICHAEL KOHN: Your Honor, intervenor has
4 some motions to strike.

5 CHAIRMAN BLOCH: Before the motion to strike,
6 I just want to ask the witnesses if you understand that if
7 we grant the motion to admit this evidence as if read, it
8 means it is exactly the same as if you had said these
9 words aloud in this hearing.

10 WITNESS ZIMMERMAN: Correct.

11 WITNESS REYES: Yes.

12 CHAIRMAN BLOCH: Motion to strike.

13 MR. MICHAEL KOHN: Your Honor, page five,
14 question seven, the first paragraph. In response it says,
15 "With respect to the illegal transfer issue, this
16 testimony should have been provided during phase I, and
17 not during phase II," and we therefore move to strike the
18 first paragraph of the response to question seven.

19 CHAIRMAN BLOCH: Staff response.

20 MS. YOUNG: This section of the testimony was
21 addressing the contention from the standpoint of these
22 gentleman coming at a time in the proceeding where other
23 information had come to light in terms of the record, and
24 that is why this statement was there, and this panel is
25 addressing character and integrity, and I don't believe

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1 that the previous panels addressed the issue of character.

2 MR. MICHAEL KOHN: Your Honor, this paragraph
3 opens up some big can of worms. The statement that,
4 "Given that no illegal transfer occurred."

5 In fact, that is a contention in this case.
6 Obviously, intervenor feels otherwise, and I think that
7 it's -- the response in this paragraph --

8 CHAIRMAN BLOCH: You have already spoken to
9 the issue. I don't think there is reason to continue.
10 Does licensee have a comment?

11 MR. BLAKE: No.

12 CHAIRMAN BLOCH: The motion to strike is
13 granted. This portion of the case is not on the legal
14 transfer.

15 To the extent that you wish to ask these
16 witnesses about whether there is any indication within the
17 diesel generator phase of this case, of an illegal
18 transfer, I believe that is within the scope of this
19 portion of the proceeding.

20 MR. MICHAEL KOHN: The next motion to strike
21 would be on page six, last paragraph. The statement says,
22 "In addition, GPC's interaction with NRC after 1990," we
23 believe is outside the time frame of the scope of this
24 proceeding, and therefore, that paragraph should be
25 stricken.

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1 CHAIRMAN BLOCH: Granted.

2 MS. YOUNG: Did you want the staff heard on it
3 before you rule?

4 CHAIRMAN BLOCH: It is very clear to me. We
5 have ruled on that several times in this proceeding. Do
6 you have a comment?

7 MS. YOUNG: Well, I think if you look at the
8 whole statement in context, it says, "Interactions after
9 1990," which the staff would include as some of the
10 interactions with respect to the NOV response, and those
11 issues have been in this proceeding.

12 So while Mr. Kohn may be correct that the full
13 panoply of interactions from 1991 through 1995 have not
14 been in this proceeding, I think there are some instances
15 where statements --

16 CHAIRMAN BLOCH: If you wish to replace this
17 paragraph by asking about the NOV response, you may do
18 that, but the paragraph, as it is now should be struck.

19 It is too broad.

20 MS. YOUNG: Is the Board's ruling also that
21 testimony we have had in this proceeding regarding every
22 incident concerning Vogtle that transpired in 1991 forward
23 is no longer in this proceeding, because testimony, I do
24 believe, has come in on issues that occurred in '91.

25 CHAIRMAN BLOCH: I think without having

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1 specific identification of the areas I am unwilling to
2 make a broad ruling striking portions of the transcript
3 that are not specified.

4 If in reviewing the transcript, the parties
5 find that there are areas subsequent to 1990 that aren't
6 strictly limited to the diesel generator question then a
7 motion to strike could be made part of the findings.

8 MR. MICHAEL KOHN: Or simultaneously filed?

9 CHAIRMAN BLOCH: Actually, it would be even
10 better if motions to strike were filed within two weeks of
11 the time that we conclude the hearing, so that people
12 preparing findings can understand what the motions to
13 strike are.

14 MR. MICHAEL KOHN: Your Honor, the next
15 portion would be page two. The 1 in a bracket on the
16 first line, that sentence should be stricken to the next
17 bracket.

18 In other words, the phrase, "The alleged
19 illegal transfer of control of nuclear operations at
20 Vogtle without NRC approval."

21 CHAIRMAN BLOCH: I believe that that should be
22 granted consistent with the ruling we made earlier. So
23 that number 1 clause is struck.

24 MR. MICHAEL KOHN: In fact, I think the
25 testimony would read better if it went from, "associated

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1 with," and then picked up, "the alleged false reporting."

2 If NRC would agree.

3 MR. BLAKE: Can you start over again. I am
4 sorry.

5 MR. MICHAEL KOHN: Yes.

6 MR. BLAKE: Just repeat it.

7 MR. MICHAEL KOHN: The statement --

8 CHAIRMAN BLOCH: The area struck is on page
9 two, beginning with the parentheses before the 1, and
10 ending on line two, with the parentheses after the 2.

11 MR. MICHAEL KOHN: And finally, on page seven,
12 with respect to the statement in the parentheses 3, on the
13 third line down from the top, "GPC's overall performance
14 communications," if it is understood that they are
15 referring to the communications within the time period
16 intervenor does not have an objection, but our initial
17 reading was that it was including communications outside
18 the relevant time period.

19 So, if NRC would indicate --

20 CHAIRMAN BLOCH: You will have to probe that
21 on cross. I can't think of any other way to handle that.

22 MR. MICHAEL KOHN: Yes. I think you are
23 right. I have no further motions, Your Honor.

24 CHAIRMAN BLOCH: The motion to admit into
25 evidence, modified by the granting of some of the motions

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1 to strike, is granted, and the testimony and the two
2 exhibits may be bound into the transcript at this point,
3 as if read.

4 INSERT TESTIMONY OF ZIMMERMAN AND REYES.

5 (Whereupon, the documents marked for
6 identification as Staff's Exhibit
7 Nos. II-52 and II-53, were received
8 in evidence.)

9 MS. YOUNG: The panel is available for cross-
10 examination.

11 CHAIRMAN BLOCH: Mr. Kohn.

12 MR. MICHAEL KOHN: Thank you, Your Honor.

13 CHAIRMAN BLOCH: We do plan to stop promptly
14 at 5:00. So just keep that in mind.

15 CROSS-EXAMINATION

16 BY MR. MICHAEL KOHN:

17 Q Good afternoon, gentleman.

18 WITNESS ZIMMERMAN: Good afternoon.

19 WITNESS REYES: Good afternoon.

20 Q I am certainly sorry for any delay in getting
21 you here. Is it my understanding -- or let me rephrase
22 that, is it your understanding that your testimony is not
23 expert testimony?

24 CHAIRMAN BLOCH: Are you asking a legal
25 question?

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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: Licensee Amendment
Units 1 and 2))	(Transfer to Southern Nuclear)
)	

TESTIMONY OF ROY P. ZIMMERMAN AND LUIS A. REYES
ON THE CHARACTER AND INTEGRITY CONTENTION

Q1. Would you each please state your name, job title, employment affiliation, and professional qualifications.

ANSWER

My name is Roy P. Zimmerman. I am employed by the U.S. Nuclear Regulatory Commission as the Associate Director for Projects in the Office of Nuclear Reactor Regulation. A statement of my education and my professional qualifications is attached (Attachment A).

My name is Luis A. Reyes. I am employed by the U.S. Nuclear Regulatory Commission as the Deputy Regional Administrator for Region II. A statement of my education and my professional qualifications is attached (Attachment B).

Q2. What is the purpose of your testimony?

ANSWER

The purpose of this testimony is to address NRC management's assessment of the character and integrity of the proposed transferee, Southern Nuclear Operating Company (Southern Nuclear), in light of the matters raised by the contention admitted in this proceeding:

That is, whether the information associated with (1) the alleged illegal transfer of control of nuclear operations at Vogtle without NRC approval or (2) the alleged false reporting of information concerning the diesel generator after the March 20, 1990 Site Area Emergency show that the transferee lacks "the requisite character, competence and integrity, as well as the necessary candor, truthfulness and willingness to abide by regulatory requirements" to be an NRC licensee. See LBP-93-5, 37 NRC 96, 110 (1993).

Q3. Please describe your responsibilities with respect to the Vogtle facility and the proposed license transferee?

ANSWER

(Zimmerman) I have held the position of Associate Director for Projects, Office of Nuclear Reactor Regulation, since June, 1994. My duties include oversight responsibility for project management activities related to licensing and inspection of power reactor facilities. I manage certain NRC activities regarding Vogtle, including assisting Region II in monitoring licensee safety performance, and the review and processing of license amendment requests submitted by Georgia Power Company (GPC) and Southern Nuclear.

(Reyes) Since 1986, I have been employed at the NRC Region II Office, which has oversight responsibilities for GPC facilities such as Vogtle and the proposed transferee, Southern Nuclear, which currently operates Alabama Power Company's Farley Plant. As Director of the Division of Reactor Projects from 1987 to 1992, I was involved in the reviews and inspections conducted prior to the issuance of the operating licenses for Vogtle Units 1 and 2. Currently, I am the Deputy Regional Administrator and I am responsible for NRC inspection and enforcement activities at nuclear facilities in Region II, including those operated by GPC and

the proposed transferee, Southern Nuclear. My position involves a significant amount of interface with GPC and Southern Nuclear officials.

Q4. Would you each describe your familiarity with the matters raised by the contention in this proceeding?

ANSWER

(Reyes) On March 20, 1990, I was the first NRC manager to respond to the loss of offsite power and subsequent Site Area Emergency (SAE) declared at Vogtle. I was also involved in the decision to allow Unit 1 to restart. In August 1990, I established and managed the Special Team Inspection that reviewed certain allegations raised concerning the Vogtle accident in 1990.

Pierce Skinner, a member of my staff, was a member of the Vogtle Coordinating Group (VCG) and kept me apprised of the VCG's activities and recommendations. During a rotational assignment in the NRC Office of Nuclear Reactor Regulation (NRR), I participated in the issuance of the May 9, 1994, Notice of Violation and Proposed Imposition of Civil Penalties (NOV) and Demands for Information (DFI) that were issued to GPC and a number of individuals employed by GPC based on violations related to GPC's failure to provide complete and accurate information to the NRC. Also, as a senior Regional manager, I was involved in the decision to issue the February 13, 1995, Modified Notice of Violation and Proposed Imposition of Civil Penalties (Modified NOV), regarding the Severity Level II problem previously identified in the NOV.

(Zimmerman) In my current position, I have been briefed by the NRC Vogtle Coordinating Group (VCG) during their evaluation of the GPC and individual responses to the

Notice of Violation (NOV) and Demands for Information issued to Georgia Power Company on May 9, 1994. I participated in the decision to issue the NRC's Modified Notice of Violation and Proposed Imposition of Civil Penalties (Modified NOV) issued on February 13, 1995. I also direct Staff activities regarding the review of GPC's proposed request for license transfer.

(Zimmerman and Reyes) Specifically, we have read portions of the illegal transfer testimony received in evidence during the January 1995 hearing in his proceeding. We are generally familiar with issues raised by Intervenor and the positions of GPC and the NRC Staff. With respect to the diesel generator issue, we have read: the 1990 GPC correspondence identified in the NOV and Modified NOV; the Office of Investigations (OI) Report of Investigation, Case No. 2-90-020R, dated December 17, 1993 (OI Report); the Vogtle Coordinating Group Reports, dated February 9 and November 4, 1994, the May 1994 NOV and DFIs; the 1994 GPC and individual responses to the NOV and DFIs; the OI Memorandum to James Milhoan, dated October 28, 1994 [OI Analysis of GPC's NOV Response]; the February 1995 supplemental NOV responses by GPC and George Bockhold; the February 1995 Modified NOV; and portions of the stipulated transcripts for Tapes 57 and 58.

Q5. Have you listened to any of the Mosbaugh audio tape recordings regarding the diesel generator issue in this proceeding and please explain the reason why you have or have not?

While Mr. Reyes has heard portions of Tapes 57 and 58 during briefings conducted prior to the completion of the OI Report, we have not listened to any other tapes. We have relied on our respective staffs, and the VCG, comprised of NRR, Region II and Office of Enforcement personnel, to accomplish the detailed effort of listening to Intervenor tapes and identifying information pertinent to the diesel generator issue in this proceeding.

Q6. Are you familiar with the NRC inspection reports, OI Report Exhibits, or other documents identified in the VCG reports, the GPC NOV Response, and the GPC and individual responses to the DFIs?

Except as noted above, we have not been involved in assessing the underlying events described in the NRC's enforcement action against Vogtle at a level of detail that would include a review of the documents mentioned. Again, we relied on the VCG to evaluate information gathered by OI and any other pertinent information as necessary to identify whether there were any violations associated with the allegations raised by Intervenor.

Q7. What conclusions has the Staff reached concerning whether the specific matters alleged by Intervenor in support of his contention show that the transferee lacks the requisite character, competence, integrity, truthfulness and candor?

With respect to the "illegal transfer" issue, the Staff has concluded, as explained in the testimony by the NRC panel during the January 1995 hearing, that GPC has kept the Staff informed regarding the proposed transfer and that the Staff is not aware of any information that would alter its previous finding published in a Director's Decision (DD-93-8), that GPC has been and remains in control of nuclear operations at Vogtle. Given that no illegal transfer occurred, the Staff does not find any basis to conclude that the illegal transfer issue shows that Southern Nuclear lacks the requisite character and integrity to be a license transferee.

With respect to the diesel generator issue, the Staff concludes that the circumstances show a number of performance failures rather than the lack of character alleged in the contention. The Staff did not conclude that senior GPC managers intentionally provided inaccurate, incomplete and misleading information to the NRC regarding the testing and reliability of the diesel generators following the SAE.

As set forth in the NOV, the NRC concluded that the violations are of regulatory significance, not because of the effect that the inaccuracies had on the safety of plant operations, but because the circumstances surrounding the communication with the NRC demonstrated an inadequate regard individually by a number of senior GPC officials, and collectively, by GPC management, for complete and accurate communications with the NRC. This stemmed in large part from the initial failure to ensure the accuracy of the start count information presented on April 9 and the failure of GPC to resolve concerns raised by its own staff regarding the accuracy and completeness of information subsequently submitted. In light of the instances of individual and corporate performance failures and the importance of ensuring prompt correction of errors once identified, the events showed that GPC did not comply with 10 C.F.R. § 50.9 and raised a concern as to whether GPC had been candid in communications to the NRC.

GPC, however, did take steps to keep the NRC informed during post-repair and trouble shooting activities and showed technical competence in those and related activities. Even though it was not until August 30, 1990, that diesel generator start counts initially provided on April 9 were corrected, senior GPC managers, including Mr. Hairston, endeavored to keep the NRC informed about errors identified by GPC personnel as they became aware of them.

In addition, GPC interactions with the NRC after 1990, particularly during plant tours, management meetings, and day-to-day interface with resident inspectors and other Region II personnel, have been straightforward and candid. These interactions have involved both GPC site and corporate personnel (including Messrs. Hairston and McCoy, who are also officers of Southern Nuclear).

In view of (1) the corrective actions identified in the GPC Response to the NOV and DFIs, (2) the commitments by GPC, Southern Nuclear and Mr. Bockhold that were provided on February 1, 1995, and (3) GPC's overall performance in communicating with the NRC subsequent to the SAE, the Staff concludes that circumstances surrounding the diesel generator reporting issue reveal a number of performance failures rather than a lack of character and integrity as alleged in the contention. Given that a number of GPC management officials also are officers of the proposed transferee, Southern Nuclear, and that other individuals identified in the Modified NOV would be employed by Southern Nuclear if the proposed transfer were granted, the Staff has no basis for concluding that the proposed transferee lacks the requisite character, competence, integrity, truthfulness and candor to operate a nuclear facility.

Roy P. Zimmerman

U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Education: Graduated from the United States Merchant Marine Academy
Bachelor of Science degree in Marine (Mechanical) Engineering

Experience

1994 - Present Associate Director for Projects, Nuclear Reactor Regulation (NRR)
Responsible for overall project management activities related to licensing and inspection of power and non-power reactors; oversees programs and procedures to assess daily reactor events and recommend corrective actions

1993 - 1994 Task Force Leader, Office of the Executive Director for Operations
Led two Consecutive Tasks; the first assignment involved leading an interoffice task force responsible for assessing the overall handling by the industry and the NRC of performance issues with certain Rosemount transmitters; the second effort involved developing an implementation plan for the Agency's Regulatory Review Group recommendations

1992 - 1993 Deputy Director, Division of Reactor Inspection and Licensee Performance, NRR
Responsible for overseeing the performance of special reactor inspections, vendor inspections, and reviews of quality assurance aspects of nuclear facility licensees

1989 - 1992 Director, Division of Reactor Safety and Projects, Region V
Managed inspection and evaluation programs for Region V power reactors, including systematic evaluation of licensee performance, resident inspector, enforcement and allegation followup

1987 - 1989 Branch Chief, Reactor Projects, Region V
Responsible for managing inspections, allegation-followup, and enforcement for assigned power reactors

- 1984 - 1987 Senior Resident Inspector, Palo Verde
Responsible for overseeing and implementing a significant portion of the inspection program at that site.
- 1980 - 1984 Senior Resident Inspector, Ginna
Responsible for overseeing and implementing a significant portion of the inspection program at that site.
- 1979 - 1980 Resident Inspector, Millstone
Responsible for implementing a significant portion of the inspection program at that site.
- 1978 - 1979 Region-based Inspector, Region I
Conducted inspections at numerous sites in the areas of quality assurance, maintenance, and testing
- 1976 - 1978 Engineering Officer of the Watch Qualification and Instructor, General Electric at Knolls Atomic Power Laboratory
After completing qualification, trained Navy nuclear personnel.

Luis A. Reyes

U.S. Nuclear Regulatory Commission
Atlanta, Georgia 30323

Education:

B.S., Electrical Engineering, 1973
M.S., Nuclear Engineering, 1975
Post Graduate Work in Fusion Energy
Professional Engineer's License

Experience:

1992 - Present

Deputy Regional Administrator, Region II

Executes established NRC policies and assigned programs relating to inspection, licensing, enforcement and governmental liaison within Regional boundaries.

During February - June 1994, assigned to the position of Associate Director for Reactor Projects, NRR, and participated as a member of the NRR Executive Team providing project management, and licensing functions for all power and research reactors, event assessment, and generic communications.

1987 - 1992

Director, Division of Reactor Projects, Region II

Responsible for the regulatory oversight of operations and construction at all nuclear reactors in the Southeast.

1986 - 1987

Deputy Director, Division of Reactor Projects, Region II

Responsible, along with the Director, for the regulatory oversight of operations at all nuclear reactors in the Southeast excluding those owned by the Tennessee Valley Authority.

1984 - 1986

Operations, Branch Chief, Division of Reactor Safety, Region III

Responsible for the implementation of Region based inspections in the areas of core physics, preoperational and startup testing and licensed operator examinations for all nuclear plants in the Midwest.

1983 - 1984

Chief, Test Programs Section, Division of Reactor Safety, Region III

Responsible for directing and participating in preoperational and startup inspections prior to issuance of operating licenses to reactors in the Midwest.

NUCLEAR REGULATORY COMMISSION

Docket No. 83-424/425-OLA-3 EXHIBIT NO. II-53

In the matter of Georgia Power Co. et al., Vogtle Units 1 & 2

 Staff Applicant Intervenor Other

Prepared by: [Signature] Date: [Date]

- 1982 - 1983 Section Chief, Division of Reactor Projects, Region III
Responsible for directing and participating in the Resident Inspection Program at a large number of reactors in the Midwest.
- 1979 - 1982 Senior Resident Inspector, Division of Reactor Projects, Region III
Established the resident office at the Davis-Besse site, monitored the startup of the unit after TMI required shutdown order and conducted the implementation of the Resident Inspection Program.
- 1978 - 1979 Reactor Inspector, Region III
Conducted inspections in the region based inspection program.
- 1975 - 1978 Instrumentation and Control Engineer, Argonne National Laboratory
Responsible system engineer for several systems at the Experimental Breeder Reactor II.

1 MR. MICHAEL KOHN: I am asking the witnesses
2 whether they believe that their testimony and their
3 opinions constitute opinions of expert witnesses.

4 CHAIRMAN BLOCH: It doesn't sound like a non-
5 legal question. Do you want to ask it in common language?

6 MR. MICHAEL KOHN: Are the opinions you are
7 presenting, in your estimation, constituting --

8 BOARD EXAMINATION

9 CHAIRMAN BLOCH: Let me try. Are the opinions
10 that you are presenting dependent upon your technical
11 expertise as scientists or engineers?

12 WITNESS ZIMMERMAN: Not solely.

13 WITNESS REYES: In my case it includes direct
14 interface with the company and specifically the
15 individuals for a period of time of over nine years.

16 CHAIRMAN BLOCH: That is mostly day-to-day
17 interactions and professional experience?

18 WITNESS REYES: Correct.

19 CHAIRMAN BLOCH: And Mr. Zimmerman, to what
20 extent is your testimony dependent on your technical
21 expertise?

22 WITNESS ZIMMERMAN: It has evolved from my
23 dialogues with the Vogtle coordinating group in review of
24 the various documents that are in my pre-file testimony.

25 Also I bring forward my previous experience

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1 outside of my dealings with Vogtle that I draw from that I
2 think make me an appropriate witness for the agency in
3 this area.

4 CHAIRMAN BLOCH: Is this prior experience with
5 management questions at other plants?

6 WITNESS ZIMMERMAN: Yes.

7 MR. MICHAEL KOHN: And so, is it your opinion
8 that you are qualified as an expert to testify here?

9 CHAIRMAN BLOCH: Expert in what, Mr. Kohn?

10 MR. MICHAEL KOHN: Expert in -- let's see how
11 this thing is headed -- character and integrity.

12 WITNESS ZIMMERMAN: Yes.

13 MR. MICHAEL KOHN: Your Honor, we move to
14 strike the testimony of Mr. Zimmerman based on the
15 assertion by NRC counsel that the testimony was not
16 expert.

17 MS. YOUNG: Did staff counsel make any
18 assertion during this questioning?

19 MR. MICHAEL KOHN: Yes.

20 MS. YOUNG: Staff counsel didn't say anything.

21 CHAIRMAN BLOCH: I don't understand the
22 grounds for the testimony. If it could be non-expert
23 testimony inadmissible, and it also was expert testimony.

24 Why is that a ground to strike?

25 MR. MICHAEL KOHN: Your Honor, let me probe

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1 this a little further.

2 CHAIRMAN BLOCH: If I could understand it I
3 might be able to side with you. I just don't understand
4 it at all.

5 MR. MICHAEL KOHN: Yes, sir. When this
6 panel's testimony was initially filed, intervenor filed a
7 motion for discovery based on the fact that the testimony
8 constituted testimony of expert witnesses.

9 NRC's staff's response was that the panel was
10 not providing expert testimony, and we relied on that
11 written assertion, and did not follow up on discovery, and
12 in fact, were denied the discovery afforded expert panel.

13 CHAIRMAN BLOCH: So what is the nature of the
14 discovery for which you have been deprived?

15 MR. MICHAEL KOHN: The ability to depose the
16 witnesses. The ability to obtain what documents they
17 reviewed to draw their expert conclusions, and NRC's
18 assertion that they were not experts, which caused
19 intervenor to frame our case in a certain way, and to
20 decide not to call an expert panel of our own, with
21 respect to character and integrity.

22 MR. BLAKE: I would like to be heard on this
23 topic. I have now heard on a number of occasions the
24 distinctions being drawn between expert and fact witnesses
25 from the federal rules being applied in some very

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1 stringent manner to the NRC's proceedings.

2 You have to search harder than I am capable of
3 searching to find that sort of distinction in the NRC's
4 rules of practice or in fact, in its application.

5 Virtually all of the witnesses in these very
6 technical proceedings that the NRC conducts, are experts
7 to one degree or another.

8 We have, frankly, quite few purely factual
9 witnesses. It has also been true in this case, but when
10 you ask the NRC staff to provide its judgments on an array
11 of issues like are in front of the Board here, you
12 necessarily can't get a fact witness, and I am not sure
13 whether it is a technically qualified expert in the name
14 applied in the federal rules of evidence, Judge Bloch, but
15 it is management from NRC who represent the NRC's views on
16 these topics, based on their background, and you all
17 decide what weight to give it, and what worth it is, but
18 the application in some hyper-technical fashion of the
19 federal rules of experts to this setting, I think is just
20 plain inappropriate.

21 MR. MICHAEL KOHN: Your Honor, if I may --

22 CHAIRMAN BLOCH: You may, but as you comment -
23 - well I would like only one of you to comment, not two --
24 but as you comment, I would like you to mention why this
25 not untimely, given that the qualifications of Mr.

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1 Zimmerman and Mr. Reyes have been with you for some time.

2 MR. MICHAEL KOHN: Your Honor, first, the
3 federal rules of evidence is not what is governing here.
4 What is governing here is the NRC's rule on expert
5 witnesses, which is what we cited back in April of 1995.

6 MS. YOUNG: Can you refer the Board to a
7 document, because my recollection of what transpired is
8 not consistent with what you represented this morning.

9 MR. MICHAEL KOHN: Okay.

10 CHAIRMAN BLOCH: Let's start with the specific
11 section of the code of federal regulations.

12 MR. BLAKE: Good start.

13 MR. MICHAEL KOHN: I don't have the CFR in
14 front of me, Your Honor.

15 MR. BLAKE: I will give you a copy.

16 MR. MICHAEL KOHN: That is fine. Thank you.
17 First, I think that this entire setting was set forth in
18 pleadings filed, and the Board actually issued an order on
19 this exact area, stating that our objection to the pre-
20 file testimony was moot because NRC staff was indicating
21 that they were not being called as witnesses, as expert
22 witnesses.

23 That I believe is within the record, clearly,
24 and the motion we filed was based specifically on the
25 regulations requiring information concerning discovery

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1 against experts, and we can search for it and find it, but
2 it certainly is in here.

3 MR. STEPHEN KOHN: Your Honor, if I may be
4 heard because I participated in this, and I think I can
5 help the Board understand procedurally.

6 CHAIRMAN BLOCH: So what is the section?

7 MR. STEPHEN KOHN: Okay. I don't know of the
8 section in here, and which section is relied on.

9 CHAIRMAN BLOCH: Let's start with that and
10 then go on to other things.

11 MS. YOUNG: Judge Bloch?

12 CHAIRMAN BLOCH: Yes.

13 MS. YOUNG: If I could be heard while people
14 are searching for a reference. My recollection of what
15 transpired is not consistent with what intervenor's
16 counsel has indicated.

17 My recollection is that intervenor noticed the
18 deposition of Mr. Zimmerman and Mr. Reyes when they became
19 aware that they would testify in this proceeding.

20 My recollection is that that notice was dated
21 March 22nd, and the staff responded in a letter dated
22 March 29th, where it indicated that we would make those
23 individuals available for a deposition on April 25th.

24 The Board issued an order since that notice
25 involved a request for deposition concerning Mr. Milhoan

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1 and other individuals, issued an order denying some of the
2 discovery requests, but indicating that the deposition of
3 Mr. Zimmerman and Mr. Reyes, contrary to what intervenor
4 has represented, could occur on April 25th or whatever
5 time may be agreed upon by the parties.

6 April 25th came and went. Intervenor did not
7 want the deposition, chose not to pursue the deposition,
8 and frankly, I see no good cause for raising on September
9 26th, some five or six months later, a request to depose
10 individuals whose testimony was pre-filed in April, 1995.

11 CHAIRMAN BLOCH: The Board is prepared to
12 rule.

13 MR. STEPHEN KOHN: No. Your Honor, if I could
14 just be heard.

15 MS. YOUNG: The Board's order is dated March
16 30th, 1995.

17 CHAIRMAN BLOCH: Briefly, Mr. Kohn.

18 MR. STEPHEN KOHN: Exactly. What procedurally
19 happened was when this panel was identified, we
20 interpreted this panel to be an expert panel on the basis
21 of what was stated in their testimony.

22 We filed for discovery, and we wanted certain
23 documents which are generally available from experts, as
24 opposed to a fact witness.

25 The NRC responded, and stated in their

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1 response, which was either a letter or in a pleading, that
2 this panel was not going to be called as experts.

3 Once the NRC said they were not being called
4 as experts, even though -- we said fine.

5 We didn't need the discovery. We backed off
6 because they are not experts, and we relied upon it from
7 that day until today.

8 Mr. Zimmerman just said he is going to be here
9 to give expert testimony.

10 WITNESS ZIMMERMAN: If I could make a comment?

11 CHAIRMAN BLOCH: No. That will not be
12 necessary, Mr. Zimmerman. Really. Thank you. I
13 appreciate you volunteering.

14 There is no way that the Board will prevent
15 examination of these witnesses at this time. If there is
16 some relief to be sought, then intervenor may file a
17 written motion explaining exactly the nature of the
18 relief.

19 If in fact, you are entitled to further
20 discovery that you were improperly denied, we will
21 consider that, but we are not going to stop the cross-
22 examination.

23 I will point out that Mr. Zimmerman's
24 testimony, excuse me, let's start with Reyes. Mr. Reyes
25 has stated, in effect, that his testimony is based on his

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1 professional experience and his interaction with the
2 individuals.

3 So it doesn't fit the expert model that you
4 are talking about. As far as Mr. Zimmerman's resume, the
5 expertise he is talking about is his career as a member of
6 the Nuclear Regulatory Commission, and his experience with
7 the industry both during his time at the NRC and prior to
8 that.

9 This is the standard qualifications of an NRC
10 expert, and it is not the kind of expertise that requires
11 detailed prior discovery.

12 If in fact, I am incorrect in that, then the
13 written motion may establish that.

14 MS. YOUNG: Judge Bloch, may I also add that
15 in response to request for documents, we stated in the
16 March 29th letter to intervenors that, "The documents on
17 which these individuals' opinions were based, were factual
18 information considered by the NRC staff, and taken the
19 enforcement action related to the diesel generator matter
20 in this proceeding," and that those documents have either
21 been disclosed or have already been distributed to the
22 parties or are otherwise publicly available.

23 There is no unfairness associated with this
24 panel or the inability or decision not to pursue the basis
25 for their judgments in this proceeding prior to their

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1 testimony today.

2 CHAIRMAN BLOCH: Okay. I guess once we have
3 ruled I would prefer that there not be further supporting
4 comments either, because that invites further opposing
5 comments.

6 I understand the fervor of Ms. Young, but the
7 ruling has been made and there will be no further
8 discussion of it.

9 Let's continue with the witnesses.

10 BY MR. MICHAEL KOHN:

11 Q Mr. Zimmerman, did you have any responsibility
12 for plant Vogtle prior to June, 1994?

13 A No. I did not.

14 Q As I understand it, then, your review of the
15 underlying documented support that Ms. Young just stated,
16 would be a second hand review of the OI report, the
17 coordinating group analysis --

18 CHAIRMAN BLOCH: Mr. Kohn, he could be
19 reviewing that analysis, but he can't be conducting a
20 second hand review of it.

21 BY MR. MICHAEL KOHN:

22 Q As I understand it, the scope of your
23 testimony is solely based on a review of documents
24 prepared -- let me actually ask you: Mr. Zimmerman, what
25 is the scope of the documents you used to base the

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1 opinions set forth in this testimony?

2 A They are specified in the pre-file testimony.

3 CHAIRMAN BLOCH: That is a good answer, what
4 are the pages? Yes, whenever you can refer to your pre-
5 file testimony instead of repeating it, it can save some
6 time.

7 WITNESS ZIMMERMAN: Page four, second
8 paragraph, middle of the paragraph.

9 BY MR. MICHAEL KOHN:

10 Q And your opinions are not based on any other
11 factual information or documentation other than the
12 documents set forth on page four?

13 A It is based on discussions with the Vogtle
14 coordinating group on a couple of occasions.

15 It is also, my knowledge also comes from time
16 that I have spent here in the hearing room for the last
17 few days, and things that I have heard, bits and pieces of
18 transcripts that have been brought forward that I have
19 become familiar with, but only in paragraph form.

20 The documents that have been read on a more
21 thorough basis are the ones that are identified in the
22 pre-file testimony.

23 BOARD EXAMINATION

24 CHAIRMAN BLOCH: Mr. Zimmerman, if I
25 understand, you are not thoroughly familiar with the

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1 record in this case.

2 Is that correct?

3 WITNESS ZIMMERMAN: I consider myself to be
4 generally familiar.

5 BY MR. MICHAEL KOHN:

6 Q And would you say that the documents you cite
7 to in their totality more accurately set forth the factual
8 information than you could?

9 A Could you repeat the question, please.

10 Q Would you agree that the documents you refer
11 to on page four more accurately set forth your
12 understanding of the facts than you are prepared to do
13 today.

14 MS. YOUNG: I object to that question as not
15 having any meaning.

16 CHAIRMAN BLOCH: I don't think it has any
17 meaning the way you have asked it, either. Just watch the
18 words, please. He couldn't have a better understanding,
19 statement of his understanding than what he is going to
20 state today.

21 BY MR. MICHAEL KOHN:

22 Q Would you say it is fair to state that the
23 documents identified on page four of your pre-file
24 testimony, set forth the entire scope of factual
25 information on which your opinions are based?

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1 A No. Again, indicating that the discussions
2 that I have had with the Vogtle coordinating group, that I
3 have had with staff counsel, and other information that I
4 have read during my time in the hearing room, also
5 contributes to my knowledge level.

6 Q Okay, and can you tell me how your
7 conversations with staff counsel effected your beliefs and
8 opinions?

9 MS. YOUNG: Objection. Inquiring about
10 attorney/client communications.

11 CHAIRMAN BLOCH: Sustained.

12 MR. MICHAEL KOHN: Your Honor, if the witness
13 is testifying as an expert, then they must waive their
14 attorney -- there is no attorney/client communications.

15 CHAIRMAN BLOCH: You may ask about facts that
16 they obtain from counsel, but you may not ask about the
17 conversations with counsel.

18 MS. YOUNG: And again, these people are not
19 experts in the classic sense that the federal rules refers
20 to.

21 These are individuals who make decisions about
22 licensees every day, and Mr. Zimmerman will be an
23 individual that makes a decision on the transfer currently
24 pending from Georgia Power to Southern Nuclear.

25 MR. MICHAEL KOHN: Thank you.

1 BY MR. MICHAEL KOHN:

2 Q Mr. Zimmerman, can you tell me what previous
3 experience you have in -- let me rephrase it. Have you
4 ever made a determination that a licensee does not have
5 the character or competence to handle nuclear fuel or
6 nuclear matters or operate a nuclear facility?

7 A Repeat the question, please.

8 Q Have you ever made a determination that any
9 individual or entity does not have the character and
10 competence to be a licensee or handler of nuclear
11 materials?

12 A I don't believe that I have ever made that
13 conclusion, although I make that evaluation on almost a
14 daily basis.

15 Going back to my 14 years in the regional
16 offices and being a senior resident inspector and resident
17 inspector at three different facilities, being placed in a
18 variety of different situations that resulted in
19 information coming in to help assess the character and
20 make up of licensee organizations on a regular basis.

21 Q That is of an ongoing, licensed, plant.
22 Correct?

23 A Also for plants that currently don't hold
24 licenses.

25 Q Okay. Have you ever looked at the transfer of

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1 a license before? What the standards should be?

2 A I have looked at our safety evaluations that
3 have been issued for what we consider for license
4 transfer.

5 CHAIRMAN BLOCH: Mr. Kohn, are you suggesting
6 that the standard for a transfer is somehow less than that
7 for a operating license?

8 MR. MICHAEL KOHN: No, Your Honor. I am just
9 trying to understand the witnesses' understanding.

10 BY MR. MICHAEL KOHN:

11 Q Mr. Zimmerman, is your pre-file testimony
12 contained here as modified with the portions deleted,
13 based on factual information about how Georgia Power
14 responded to NRC concerns after 1990?

15 A Your question is after the rulings in the
16 areas that have been struck already? Is there anything
17 remaining that is an opinion based after the 1990 time
18 frame?

19 CHAIRMAN BLOCH: I think you should, out of
20 fairness, direct the witness to the particular area of his
21 testimony that we were discussing before.

22 MR. MICHAEL KOHN: Actually, it is a more
23 general question than that.

24 CHAIRMAN BLOCH: Let's start with that one,
25 and then make the general question.

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1 BY MR. MICHAEL KOHN:

2 Q If you would look on page seven. The 3 in
3 parentheses, "Georgia Power's overall performance in
4 communicating with the NRC subsequent to the site
5 emergency."

6 When this testimony was initially prepared,
7 did that statement include communications after October of
8 1990.

9 A Just give me a moment to read it, please.
10 Your question is on the first sentence, item 3, through
11 the period ending with "contention?"

12 Q That is correct.

13 A No. My reading of that is that it only
14 applies to the period associated with this event.

15 Q All right, and that period would then be up
16 through -- what do you understand the period to be? When
17 would it end?

18 A Around the beginning of September. This
19 covers the period through the August 30th letter.

20 CHAIRMAN BLOCH: I understand this to be the
21 beginning of September, 1990?

22 WITNESS ZIMMERMAN: Correct.

23 CHAIRMAN BLOCH: I would like to thank you for
24 pausing to read, and any time the witnesses need time to
25 reflect or to read or even to take a recess, please feel

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1 free to ask for it.

2 WITNESS ZIMMERMAN: Thank you.

3 BY MR. MICHAEL KOHN:

4 Q Mr. Zimmerman, if you would then look at this
5 sentence, "GPC's overall performance in computing with the
6 NRC," and limiting that sentence to the time frame between
7 April 9th and September of 1990, do you think Georgia
8 Power's performance was the type of performance you would
9 expect of an entity that would be licensed?

10 Let me rephrase it. If that performance
11 remained the same throughout the operation of plant Vogtle
12 or -- would -- is that the type of performance you would
13 want at a facility?

14 CHAIRMAN BLOCH: At a licensed facility.

15 WITNESS ZIMMERMAN: During this period of
16 time?

17 BY MR. MICHAEL KOHN:

18 Q Yes, and I want you to be cognizant of the
19 fact that I am referring to the April 9th presentation,
20 the April 19th LER, the June 29 letter to the NRC, the
21 August 30 letter to the NRC, and the communications that
22 occurred during the special inspection, the OSI.

23 Do you believe that level of communication and
24 that level of overall performance is acceptable from a
25 licensee? Continuously.

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1 A Are you focusing your question now on this
2 sentence?

3 Is that where you want my attention to be
4 focused, is on sentence three, and be thinking about that
5 in relation to your question or have you moved beyond this
6 question?

7 Q I am still on this area of your testimony.

8 CHAIRMAN BLOCH: Mr. Zimmerman, it is about
9 number three. He wants in particular for you to bear in
10 mind the particular communications he has mentioned, and
11 to see whether the sentence is correct.

12 If you limit yourself to that period and say
13 that the performance during that period will be continued.

14 MR. BLAKE: Judge Bloch, you know, that is a
15 heck of a situation to put the witness or us in.

16 You ask him about a period of time when there
17 has been a good deal of problems. and you say, "I am going
18 to restrict that and ask you whether or not if that is the
19 way they operated forever that would have been good," and
20 we are not allowed to put in how we operate.

21 That is what in fact you have asked this
22 witness to do now.

23 MS. YOUNG: In particular, you have excluded
24 information about post-1990 performance.

25 CHAIRMAN BLOCH: That's correct. In this

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1 portion of the proceeding we are only considering the 1990
2 performance, and if there is something subsequent to that
3 that is relevant, we will have another phase.

4 MR. BLAKE: But that is not what you have done
5 now, you have said, "Take this, and now it assume it
6 extended forever, what do you think of that, and I don't
7 think that is an appropriate assumption.

8 CHAIRMAN BLOCH: The objection is overruled.

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C E R T I F I C A T E

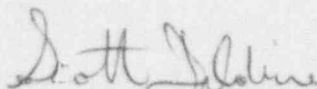
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: GA POWER CO. ET AL.
VOGTLE UNITS 1 & 2

Docket Number: 50-424/425-OLA-3

Place of Proceeding: ROCKVILLE, MARYLAND

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



SCOTT DILDINE
Official Reporter
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