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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

INTERVENOR'S MOTION TO ADMIT CERTAIN ADMISSIONS OF GEORGIA POWER

COMES NOW Allen Mosbaugh, Intervenor in the above captioned matter and moves this honorable Licensing Board to admit into the record the responses to admission set out below as well as the corresponding OI paragraph.

I. INTRODUCTION

Intervenor filed a motion to admit certain responses to Intervenor's First Requests for Admissions to Georgia Power Company and sections of the OI Report into evidence on August 11, 1995. Georgia Power responded by objecting to the admission of certain responses in its response dated August 22, 1995. After argument on the record regarding this matter the Board ruled on September 6, 1995 that Intervenor make "further showing of good cause demonstrating what the evidence is that Intervenor intends to really [sic] on, so that everyone will know what's in contest about those denials." Tr. 13159 (9-6-95). Intervenor takes this opportunity to show good cause and to demonstrate the evidence upon which Intervenor intends to rely.

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II. ARGUMENT

A. Factual Information From Valid Discovery Request is Admissible

Licensee argued on the record that the argument attached to a denial is not appropriate evidence Tr. 13081 (9-6). However, Intervenor notes that the request for admissions contain interrogatories that ask for an explanation for any response that is not an admission. The responses to the interrogatories within the request for admissions contain factual information which is admissible. The responses in which Georgia Power denied the facts in the OI Report paragraphs do not contain arguments but rather they contain Georgia Power's rendition of the facts. This information was reviewed and verified by Mr. Ajluni. Tr. 10797-98 (8-10). Mr. Ajluni performed this task, i.e. interviewing personnel and gathering factual information, apparently with the assistance of Licensee's attorneys. Tr. 10807-8 (8-10). The extent of the assistance given by Licensee's attorney's could not be determined, but from Mr. Ajluni's testimony it appears that he personally performed the majority of this task. Tr. 10797-10808 (8-10). It is the factual information, gathered and verified by Mr. Ajluni, contained in the responses as well as the information contained in the OI Report paragraphs of which Intervenor is seeking admission not the arguments of the parties.

Furthermore, Intervenor maintains that the factual information contained in the responses and the related OI Report

paragraphs is relevant and material to the issues in this proceeding and is necessary for a complete and adequate record.

B. Arguments Regarding Certain Admission Responses

Intervenor will recount each response to the request for admissions which is in controversy, the corresponding paragraph from the OI Report, and Intervenor's Reply.

ALLEGATION 1:

Licensee objects to the admission of the following responses on the basis that they are not admissions:

OI para. 25:

BOCKHOLD stated that he thought that BURR gave him the numbers associated with the diesel test descriptions above the lines on the chart, and that CASH gave him the numbers below the lines (Exhibit 13, pp. 9-10).

GPC's Response:

Neither admit nor deny. GPC admits that this evidentiary finding accurately summarizes this portion of the OI interview transcript. However, GPC lacks sufficient information to admit or deny the truth of this statement because of the differing recollections of Messrs. Bockhold and Burr.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because it shows that Messrs. Bockhold and Burr had differing recollections and that after an extensive review by Mr. Ajluni

Georgia Power could not determine what had occurred. Intervenor believes Mr. Burr's version of events while Georgia Power's theory follows Mr. Bockhold's version. This response tends to show that Mr. Bockhold's explanation of the creation of the "Cash List" is not credible. This information is also relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 27:

BURR, stated that he had no knowledge, while he was at the VEGP site, that BOCKHOLD was going to have to make a presentation to NRC on diesel testing (Exhibit 14, p. 10).

GPC's Response:

Neither admit nor deny. GPC admits that this evidentiary finding accurately summarizes this portion of the OI interview transcript. However, GPC lacks sufficient information to admit or deny the truth of this statement because of the differing recollections of Messrs. Bockhold and Burr.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because it shows that Messrs. Bockhold and Burr had differing recollections and that after an extensive review by Mr. Ajluni Georgia Power could not determine what had occurred. Intervenor believes Mr. Burr's version of events while Georgia Power's

theory follows Mr. Bockhold's version. In addition, it is highly relevant that Mr. Burr stated that he was unaware of the presentation. This Response is critical to the credibility of Georgia Power witnesses, specifically Messrs. Eckhart and Bockhold. This information is also relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 28:

BURR advised that only after he returned to Birmingham, on Saturday, April 7, 1990, was he asked to attend the April 9, 1990, presentation to NRC in Atlanta (Exhibit 14, p. 10).

GPC's Response:

Neither admit nor deny. GPC admits that this evidentiary finding accurately summarizes this portion of the OI interview transcript. However, GPC lacks sufficient information to admit or deny the truth of this statement because of the differing recollections of Messrs. Bockhold and Burr.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because it shows that Messrs. Bockhold and Burr had differing recollections and that after an extensive review by Mr. Ajluni Georgia Power could not determine what had occurred. Intervenor believes Mr. Burr's version of events while Georgia Power's

theory follows Mr. Bockhold's version. In addition, it is highly relevant that Mr. Burr stated that he was unaware of the presentation. This Response is critical to the credibility of Georgia Power witnesses, specifically Messrs. Eckhart and Bockhold. This paragraph is also important to the issue of timing. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 31:

BURR stated that when he saw BOCKHOLD present the DIESEL TESTING transparency in the April 9, 1990, presentation, it was the first time he had seen that data (Exhibit 14, p. 12).

GPC's Response:

Deny. GPC admits that the evidentiary finding accurately summarizes this portion of the OI interview transcript. However, GPC believes Mr. Burr assisted Mr. Bockhold in developing the Diesel Testing overhead.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because it shows that Messrs. Bockhold and Burr had differing recollections. It also demonstrates that Georgia Power chose to believe Mr. Bockhold and not Mr. Burr. This response impeaches Georgia Power's story on how the diesel testing slide was

produced. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 42:

CASH stated that he "turned the data over to Mr. Bockhold and he (BOCKHOLD) prepared some point papers" in which CASH assisted BOCKHOLD's secretary with format only. He stated that he had listed the information in table form with date, time, reason started, and comments (Exhibit 9, p. 6).

GPC's Response:

Deny. The evidentiary finding accurately reflects the interview transcript of Mr. Cash but GPC believes Mr. Cash provided Mr. Bockhold with only the summary of the diesel start information (i.e., the total starts for each diesel) and assisted the secretary with more than just format changes (Exh. 10, p. 26). See GPC's response to evidentiary finding No. 43¹ and Tape 58, Tr. 35.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because Georgia Power admits to what Mr. Cash told the Office of Investigation and that Georgia Power chose to believe Mr. Bockhold. This response impeaches Georgia Power's story on how the diesel testing slide was produced. Additionally, this

¹ Intervenor's Exhibit II-168, p. 10.

information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 44:

CASH stated that he turned his original handwritten information over to BURR, at BURR's request, at the April 9, 1990, presentation in Atlanta (Exhibit 9, p. 6).

GPC's Response:

Neither admit nor deny. GPC admits that this evidentiary finding accurately summarizes this portion of the OI interview transcript. However, GPC lacks sufficient information to admit or deny the truth of this statement because of the differing recollections of Messrs. Cash and Burr.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because in Georgia Power's update to its Response to the request for admissions it admits that Mr. Burr was on the plane. See Georgia Power Company's Response to Intervenor's Motion to Admit Certain Admissions and Sections of the OI Report into Evidence page 4, numbered paragraph 3.(ii). If Mr. Burr was on the plane and if he had the list, which is consistent with Mr. Cash's testimony, then the inference can be made that as early as April 9, 1990, Messrs. Hairston and McCoy were on notice of the

problems with the presentation. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 50:

In his June 14, 1993, testimony, CASH stated that he did not recall writing down the numbers 18 and 19 for BOCKHOLD, and he could only make an "educated guess" on how BOCKHOLD already had the 18 and 19 numbers in mind from the source of the data above the lines and he (CASH) came to BOCKHOLD with numbers that were greater than 18 and 19. CASH said he couldn't explain to BOCKHOLD what the additional starts were so BOCKHOLD decided to use the 18 and 19 numbers in the presentation, in order to avoid being asked a question that neither he nor CASH could answer (Exhibit 10, pp. 31-32).

GPC's Response:

Deny. GPC believes this evidentiary finding accurately reflects Mr. Cash's OI interview testimony. However, GPC believes Mr. Cash gave Mr. Bockhold the successful diesel start numbers of 18 and 19. Exh. 12, pp. 7,8.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because it Georgia Power admits to what Mr. Cash told the Office of Investigation and that Georgia Power chose to believe Mr.

Bockhold. This response impeaches Georgia Power's story on how the diesel testing slide was produced and the Bockhold/Georgia Power explanation of the origin of the 18 and 19 numbers. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 61:

BOCKHOLD stated that BURR was involved in the preparation and review of the EDG test data in the transparency presented to NRC (Exhibit 13, pp. 5-6).

GPC's Response:

Neither admit nor deny. GPC admits that this evidentiary finding accurately summarizes this portion of the OI interview transcript. However, GPC lacks sufficient information to admit or deny the truth of this statement because of the differing recollections of Messrs. Bockhold and Burr.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because it shows that Messrs. Bockhold and Burr had differing recollections. It also demonstrates that Georgia Power chose to believe Mr. Bockhold and not Mr. Burr. This response impeaches Georgia Power's story on how the diesel testing slide was produced. Additionally, this information is relevant to

establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 85:

BOCKHOLD stated that the EDG start count for the EDGs come, "Just verbally from Jimmy Paul [CASH]" (Exhibit 12, p. 7).

GPC's Response:

Neither admit or deny. GPC does not know the manner in which the information was conveyed from Mr. Cash to Mr. Bockhold, but GPC believes the information consisted of only the total number of successful starts for each diesel. See GPC's response to evidentiary finding No. 42.

Intervenor's Reply

The response is relevant and material because it shows that after an extensive review by Mr. Ajluni that he could not confirm the information was transmitted verbally. Intervenor believes that the actual data was given and therefore this response supports Intervenor's theory. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 160:

KOCHERY stated that neither he nor STOKES had provided any written information to BOCKHOLD that looked in any way like the information on the DIESEL TESTING transparency. He

stated that he did not know if BURR would have provided BOCKHOLD anything like that, but he doubted that he did (Exhibit 52, p. 2).

GPC's Response:

Neither admit or deny. GPC agrees that the evidentiary finding accurately reflects the OI interview testimony. However, GPC lacks sufficient information to determine whether Mr. Kochery provided diesel testing information to Mr. Bockhold because recollections have faded.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. Admitting that the information in the OI paragraph is accurate tends to impeach the Bockhold/Georgia Power theory and support Intervenor's. The response is relevant and material because it shows that after an extensive review by Mr. Ajluni that he could not confirm who provided diesel testing information. Intervenor believes that the actual data was given and therefore this response supports Intervenor's theory. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

ALLEGATION 2:

Georgia Power objects to the admission into the record of the following responses, which were not admissions:

OI para. 16:

AUFDENKAMPE stated that he understood that the April 9, 1990, letter was "generated up at corporate...basically by Jim Bailey and George Hairston and Ken McCoy on the way back from the NRC presentation." He said that he thought BAILEY had told him that (Exhibit 38, pp. 25-26).

GPC's Response:

Deny. GPC believes the April 9 letter had been drafted prior to the April 9 presentation and was revised by meeting participants while returning to their offices. See GPC's responses to evidentiary finding Nos. 50-60².

Intervenor's Reply

This statement of Mr. Aufdenkampe is consistent with Intervenor's theory. It is Intervenor's position that Mr. Aufdenkampe's and Georgia Power's theories are not in conflict but rather show that the participants were involved in drafting the letter before and after the April 9 presentation. This information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 36:

McCOY stated that the April 9, 1990, letter in draft form, and read it several times before it was signed by HAIRSTON. He said that he recalled the wording in paragraph g, page 3

² Intervenor's Exhibit II-168, p. 30.

of that letter regarding 18 and 19 successful starts since March 20, 1990, with no failures or problems. He said that he thought that wording was already in the letter during his reviews, and that the letter attempted to capture the same information that was presented orally (Exhibit 29, p. 16).

GPC's Response:

Neither admit nor deny. See GPC's responses to evidentiary finding Nos. 7 and 54.³

Intervenor's Reply

The information in the response and OI paragraph is relevant and material to the issues surrounding the April 9 letter and documents the involvement of Mr. McCoy in the working of the letter. It shows he was fully aware of the material false statement and the paragraph later in question. This response also demonstrates the pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

ALLEGATION 3:

Georgia Power objects to the admission of the following responses on the basis that the related OI Evidentiary Findings merely paraphrased taped statements for which there are transcripts already admitted into evidence and therefore they are cumulative, non-probative, and not the best evidence:

OI para. 9:

³ Intervenor's Exhibit II-168, p. 26,30.

AUFDENKAMPE confirms to STRINGFELLOW that he is saying that is not true, and he also tells STRINGFELLOW that he's saying something else...that statement had already been made in writing to the NRC (in the April 9, 1990, letter) (Exhibit 34, p. 96).

GPC's Response: Admit.

OI para. 10:

STRINGFELLOW tells AUFDENKAMPE and MOSBAUGH that was exactly what he was thinking (Exhibit 34, p. 96).

GPC's Response: Admit.

OI para. 12:

MOSBAUGH puts SHIPMAN directly on notice that there is a problem with the statement in the draft LER about more than 20 starts. MOSBAUGH tells SHIPMAN that there were failures (Exhibit 34, p. 104).

GPC's Response: Admit.

OI para. 13:

SHIPMAN recognizes that there is not only a problem with the statement in the draft LER, but also with what, "George [either HAIRSTON OR BOCKHOLD] wrote and took and told the ...Ebnetter last Monday in Atlanta" (Exhibit 34, p. 104).

GPC's Response: Admit.

OI para. 14:

MOSBAUGH tells SHIPMAN that, "if anybody said that there weren't any failures, that's just not true" (Exhibit 34, p. 104).

GPC's Response: Admit.

OI para. 21:

SHIPMAN tells MOSBAUGH that he (SHIPMAN) and STRINGFELLOW are going to HAIRSTON's office to , "finish beating out what he [HAIRSTON] wants to do with this thing" (Exhibit 34, pp. 108-109).

GPC's Response: Admit.

OI para. 24:

McCOY introduces terminology that is new to at least MOSBAUGH and AUFDENKAMPE, and new to the existing draft diesel start statement by saying, "We need to be sure that we know the number of starts after we've completed the comprehensive control test program" (Exhibit 36, p. 8.).

GPC's Response:

Neither admit nor deny. GPC lacks sufficient information to determine whether this is "new" terminology being introduced by Mr. McCoy. However, based on the discussions recorded on Tape 58, GPC suspects that the terminology was discussed by the participants on the call prior to Mr. Mosbaugh's entry into the discussion. The tape recording does not capture the entire conversation. See also GPC's response to evidentiary finding No. 133.

OI para. 32:

SHIPMAN then brings the conversation back to the diesel start issue by saying. "Let's see. What other questions do

we got? We got them start things straightened out" (Exhibit 36, p. 12).

GPC's Response: Admit.

OI para. 33:

SHIPMAN then says, "No, not, not..." at which point McCOY interrupts and states, "i'll testify to that" (Exhibit 36, p. 12).

GPC's Response: Admit.

Intervenor's Reply To Allegation 3, Paragraphs' 9, 10, 12, 13, 14, 21, 24, 32, 33

Intervenor contends that the evidence in the above OI Report paragraph's is not merely paraphrased taped statements. These statements were selected by a highly skilled investigator from the tape transcripts as important factual information. The fact that these statements were selected, that weight was given to them by a NRC Investigator, and that Georgia Power admitted to them is relevant and material evidence and goes to the credibility of the witnesses. Furthermore, the findings of OI are independently probative given the significance of the OI findings. Therefore, it would not be cumulative, non-probative, nor violate the best evidence rule to admit these responses and the corresponding OI Report paragraphs into evidence. This evidence is necessary for an adequate record.

Georgia Power also objects to the admission of the following responses, which were not admissions:

OI para. 57:

MOSBAUGH stated that HAIRSTON's earlier request regarding the starts in the LER pertained to verifying that there were more than 20 starts, but when he gets involved in the late afternoon phone call, he is concerned about "trips." MOSBAUGH stated that this indicated that SHIPMAN, STRINGFELLOW, or possibly McCOY had told HAIRSTON about the information given to them by MOSBAUGH and AUFDENKAMPE regarding the March 22 and March 23 trips of the 1B EDG (Exhibit 5, pp. 73-74).

GPC's Response:

Neither admit nor deny. GPC agrees that the evidentiary finding accurately reflects the OI interview transcript. However, GPC lacks sufficient information to admit or deny the truth of the finding.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. It is important that after an extensive review by Mr. Ajluni that Georgia Power was unable to deny this paragraph. This inability to refute this evidence is critical to confirming Mr. Mosbaugh's interpretation. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 102:

SHIPMAN stated that he did recall this particular conversation, and that it was held in a conference room between his and McCOY's office in Birmingham. He stated that HAIRSTON "walked in, heard what was transpiring, asked a couple questions and left." He stated that he did recall HAIRSTON asking the question, "Well, so we've got the starts. Didn't we have no trips?" (Exhibit 39, p. 43).

GPC's Response:

Neither admit nor deny. GPC agrees that this evidentiary finding accurately reflects the OI interview testimony. However, GPC lacks sufficient information to admit or deny that the conversation occurred in the conference room between the offices of Messrs. Shipman and McCoy.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. It is important that after an extensive review by Mr. Ajluni that Georgia Power was unable to deny this paragraph. This inability to refute this evidence is critical to confirming Mr. Mosbaugh's interpretation. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 115:

BOCKHOLD stated that the reason he could not come up with a definitive starting point subsequent to the test program was

"the same as before, is because those numbers, in my mind, all come from this transparency, okay and what we did in both the letter and the LER is we tried to improve upon the words in this transparency...and we carried the basic error in this transparency forward into those two letters"
(Exhibit 12, p. 18).

GPC's Response:

Deny. GPC agrees this evidentiary finding accurately reflects the OI interview testimony. However, GPC denies that Mr. Bockhold could not have identified a definitive ending point for the comprehensive test program if he had been provided with sufficient information. See GPC's Response to NRC Staff's First Set of Interrogatories, dated August 9, 1993, at 3.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because it shows a contradiction between Georgia Power's theory and the testimony of a Georgia Power witnesses. This response impeaches Georgia Power's theory as to why a definitive starting point subsequent to the test program could not be determined. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 123:

BOCKHOLD advised that he still did not know, as of the day of his interview (June 22, 1993), when the comprehensive control testing was completed, and to his knowledge no one has yet defined it (Exhibit 13, pp. 47-48).

GPC's Response:

Deny. On April 19, 1990, although the specific point in time was not identified, Messrs. Bockhold, Aufdenkampe and Shipman had a working definition of the end of the comprehensive test program and on June 29, 1990, a new definition was assigned to the term in the cover letter for the revised LER.

Intervenor's Reply

The response is relevant and material because it shows a contradiction in between Georgia Power's theory and the testimony of a Georgia Power witnesses. This response impeaches Georgia Power's theory as to when a definitive starting point subsequent to the test program defined. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 132:

BOCKHOLD stated that he did not know how McCOY supposedly knew that, "Those numbers you (BOCKHOLD) use in the (April 9, 1990) conference (with NRC) were after they had completed the comprehensive test of the control systems on each

diesel" (Exhibit 13, p. 52, line 6 and Exhibit 36, p. 9, lines 3-5).

GPC's Response:

Neither admit nor deny. GPC agrees that this evidentiary finding accurately summarizes the testimony. However, GPC lacks sufficient information to admit or deny its truth. Based on the discussions recorded on Tape 58, GPC suspects that the participants to the April 19, 1990 conference call discussed the term comprehensive test program before Mr. Mosbaugh entered the conversation and began his taping. GPC also believes there may have been other conversations regarding this subject on the same day that were not recorded. See GPC's response to evidentiary finding No. 133.⁴

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because it shows that after an extensive review Mr. Ajluni could not determine what happened and that Georgia Power's theory is based upon mere speculation or suspicion. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility

⁴ Intervenor's Exhibit II-168, p. 42.

of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 140:

CASH advised that he did think that the diesel start data in the LER was derived from the 18 and 19 starts in the April 9, 1990, presentation, "But this information was never intended (by CASH) to be used for that purpose (to be put in an LER), and all it was is some information, and it was particularly because the information that was presented here (on the DIESEL TESTING transparency) was already known to the majority of the people in exactly the context in which it should have been understood by the people that were at the meeting on -- in Atlanta" (Exhibit 9, p. 11).

GPC's Response:

Neither admit nor deny. GPC agrees that this evidentiary finding accurately reflects the OI interview testimony. However, GPC lacks sufficient information to admit or deny its truth.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because Georgia Power admits to what Mr. Cash told the Office of Investigation and that after extensive review Georgia Power is unable to refute it. This response impeaches Georgia Power's theory on the origin of the 18 and 19 numbers. Additionally, this information is relevant to establish a pattern of false

statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

ALLEGATION 4:

Georgia Power objects to the admission into the record of the following responses, which were not admissions:

OI para. 4:

MOSBAUGH stated that he had AUFDENKAMPE and WEBB prepared an LER revision that updated the data from "since the comprehensive test program" to the current date. He said it went to the PRB, the PRB defined the end of the test program, approved the correct start numbers, which were still less than what was in the original LER, and it was ready to go out on May 8, 1990. He stated that LER revision was at SONOPCO by May 15, 1990. MOSBAUGH stated that then it just sat at SONOPCO and did not get issued. He stated that the first week in June, he heard from BAILEY that HAIRSTON was going to sign out the LER on June 8, 1990. He stated that June 8, 1990, was the day that the IIT was going to make their presentation to the NRC Commissioners on the SAE, and the LER did not get signed out. He advised that a few days after June 19, 1990, when he met with BOCKHOLD and John ROGGE, that NRC Resident Inspector, regarding his safety concerns, HAIRSTON ordered that a total rewrite of the LER and a Quality Assurance (QA) audit of diesel starts be done. He advised that, with the rewrite and the audit, the

revision to the LER did not get issued until June 29, 1990 (Exhibit 5, pp. 232-240).

GPC's Response:

Deny. GPC agrees that this evidentiary finding accurately reflects the OI interview testimony. However, GPC denies that this testimony accurately describes the timing of the QA audit. Mr. Hairston requested the audit on or about June 8, 1990. See Exh. 31, pp. 79-80.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is an accurate reflection of the OI testimony. This response demonstrates a contradiction between Georgia Power's theory and the testimony of some of the witnesses. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 9:

BOCKHOLD stated that one reason that the revision to the LER was delayed so long in being issued was that GPC was trying to agree on the definition of successful starts, and finally had to give up on that effort and used the NRC's terminology of valid tests (Exhibit 12, pp. 22-23).

GPC's Response:

Neither admit nor deny. GPC agrees that this evidentiary finding accurately summarizes the OI interview testimony.

However, GPC lacks sufficient information to either admit or deny its truth.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The fact that Licensee, after an extensive review by Mr. Ajluni cannot determine the reason for the delay in issuing the LER is relevant and material. It impeaches Georgia Power's theory on this issue. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 12:

BOCKHOLD stated that the way that diesel record keeping practices would have affected the difference in the EDG start counts of the April 9, 1990, letter and the April 19, 1990, LER, versus the start counts of the June 29, 1990, revision to the LER, is that a facet of diesel record keeping is the interpretation of the data, and that difference in interpretation between the April documents and the June document accounted for the difference in the counts (Exhibit 13, pp. 80-81).

GPC's Response:

Deny. GPC denies that this evidentiary finding accurately reflects Mr. Bockhold's testimony. Further, GPC does not believe that "interpretation of the data" is part of what

GPC meant by diesel generator record keeping practices as that term was used in the June 29, 1990 LER revision cover letter. See Tape 187.

Intervenor's Reply

The fact that Licensee denies the accuracy of the OI paragraph is relevant. Intervenor believes that the OI paragraph accurately reflects Mr. Bockhold's testimony and that it is important to impeach Georgia Power's definition of what was meant by "record keeping practices." Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 37

McCOY stated that when the revision to the LER went out on June 29, 1990, the reasons given in the cover letter for the differences in the starts were correct. He stated that this was based upon a QA audit in which he had confidence (Exhibit 29, p. 65).

GPC's Response:

Deny. GPC agrees that this evidentiary finding accurately reflects the OI interview testimony. However, GPC denies that the June 25, 1990 SAER audit report accurately identified the causes for the error in the April 19, 1990 LER.

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. In denying this OI finding, Georgia Power admits that the SAER audit was not accurate. It is important that at the time of his OI interview Mr. McCoy had confidence in the audit but after Mr. Ajluni's extensive review Georgia Power could not say it was accurate. This response tends to impeach the testimony of several witnesses. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

ALLEGATION 5:

Georgia Power objects to admission of the following responses, which were not admissions:

OI para. 12:

CASH stated that he did not make any mistakes about what kind of starts he was counting at the time he did his count for BOCKHOLD before the April 9, 1990, presentation (Exhibit 10, p. 91).

GPC's Response:

Deny. GPC agrees that this evidentiary finding accurately reflects the OI interview testimony. However, GPC believes that Mr. Cash did make mistakes in performing his count.

See GPC's response to Allegation No. 1, evidentiary finding No. 66.⁵

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because Georgia Power admits to what Mr. Cash told the Office of Investigation and that Georgia Power chose to believe Mr. Bockhold. This response impeaches Georgia Power's theory regarding Mr. Cash's count and supports that of Intervenor. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 13:

CASH stated that he did not recall anyone from GPC ever discussing with him the fact that he made an mistake, or what kind of mistake it was (Exhibit 10, p. 92).

GPC's Response:

Deny. GPC agrees that this evidentiary finding accurately reflects the OI interview testimony. However, GPC believes that Mr. Ajluni discussed mistakes in Mr. Cash's count in a December 1990, note to Mr. McCoy. (Bates No. 044750-51).

Intervenor's Reply

⁵ Intervenor's Exhibit II-168, p. 13.

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material because Georgia Power admits to what Mr. Cash told the Office of Investigation and it shows the contradiction between Georgia Power's version of event and that of one of its own witnesses. This response impeaches Georgia Power's theory regarding Mr. Cash's count and supports that of Intervenor. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

OI para. 25:

AUFDENKAMPE said that he thought CASH's mistake was that he didn't count failures, that if a diesel would have tripped a minute after it had started, CASH would have counted that as a success (Exhibit 38, pp. 131-132).

GPC's Response:

Deny. GPC agrees that this evidentiary finding accurately reflects the OI interview testimony. However, this does not accurately reflect the criteria used by Mr. Cash to count successful starts. See GPC's response to Allegation No. 1, evidentiary finding Nos. 40 and 69.⁶

Intervenor's Reply

It is important to note that Licensee admits that the OI paragraph is accurate. The response is relevant and material

⁶ Intervenor's Exhibit II-168, pp. 10, 13.

because Georgia Power admits to what Mr. Aufdenkampe told the Office of Investigation and it shows the contradiction between Georgia Power's version of events and that of one of its own witnesses. This response impeaches Georgia Power's theory regarding Mr. Cash's count and supports that of Intervenor. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

ALLEGATION 7:

Georgia Power objects to admission of the following responses which were not admissions:

OI para. 1:

On April 19, 1990, the final revisions to LER 90-006 were made on an afternoon phone call in which the participants were BOCKHOLD, MOSBAUGH, AUFDENKAMPE, SHIPMAN, McCOY, STRINGFELLOW, and HAIRSTON (Exhibit 36, pp. 8-12).

GPC's Response:

Deny. The final revisions to the LER were not made on this particular conference call. See Tape 58.

OI para. 2:

On April 19, 1990, subsequent to the phone call in which the final revisions were made to LER 90-006, there was a phone call involving SHIPMAN, STRINGFELLOW, MOSBAUGH, AND AUFDENKAMPE in which these final revisions were discussed,

but no additional revisions were made. BOCKHOLD was not on this call (Exhibit 36, pp. 20-26).

GPC's Response:

Deny. The diesel starts language was finally approved by site personnel (Aufdenkampe and Mosbaugh) on this call and other portions of the LER were finalized with the additional participation of Mr. Swartzwelder. See Tape 58, Tr. 27-32.

OI para. 4:

HAIRSTON and McCOY were both on the call with BOCKHOLD on the afternoon of April 19, 1990, when the final revisions to LER 90-006 were made (Exhibit 36, pp. 8-12).

GPC's Response:

Deny. The final revisions to the LER were not made on this particular conference call. See Tape 58.

Intervenor's Reply To Allegation 7, Paragraphs 1, 2 and 4

It is important to note that Licensee admits that the OI paragraph is accurate. The fact that OI supports Intervenor's position is probative because it verifies that it was on call A and that these were the participants. Hence, OI supports Mr. Mosbaugh's position. Additionally, this information is relevant to establish a pattern of false statements and misrepresentations to the NRC and the credibility of the witnesses testimony. This evidence is necessary for an adequate record.

C. Update of Responses is Not Timely

Intervenor strenuously objects to Georgia Power's attempt to update its responses to Intervenor's request for admissions.

Georgia Power did not amend these responses even after this Board ordered the parties to review and amend its responses to discovery requests. In this respect, on March 30, 1995, the Board issued Memorandum and Order (Motion to reopen Discovery), requiring the parties to supplement discovery responses pertaining to diesel generators. On April 11 and 12, 1995, Georgia Power's counsel submitted letters asserting that a review of the discovery requests and Licensee's responses had been performed and it was determined that there was no need to update and that no additional information was discoverable. In addition, both Chairman Bloch and Intervenor's counsel, Mr. Stephen Kohn, made inquiry into whether there had been request to Mr. Ajluni to update the responses to which he responded "No." Tr.10822 (8-10). Furthermore, the updated responses have not been sworn to by any of Georgia Power's personnel and are therefore unreliable.

While it is Intervenor's belief that this eleventh hour attempt at updating the response is not appropriate, he contends that the appropriate remedy is that the updated responses and the corresponding OI Report paragraph should be admitted along with the original responses. Intervenor also asserts that the fact Georgia Power did not update these responses until August of 1995 is relevant and probative. The responses at issues are:

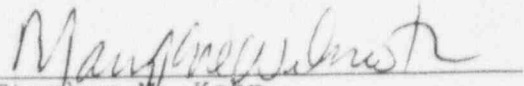
Allegation 1: 29, 62, 150;

Allegation 2: 54, 58.

III. CONCLUSION

For the forgoing reasons Intervenor requests that the admission responses and the corresponding OI paragraphs listed above be admitted into the record.

Respectfully submitted,

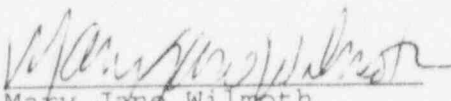

Stephen W. Kohn
Mary Jane Wilmoth
KOHN, KOHN AND COLAPINTO, P.C.
517 Florida Ave., N.W.
Washington, D.C. 20001
(202) 234-4663

Attorneys for Intervenor

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CERTIFICATE OF SERVICE

I hereby certify that the affixed motion was served this 6th day of October 1995 via hand delivery to the persons listed on the accompanying service list.


Mary Jane Wilmoth

C:\FILES\301\ADMISS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

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

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BRANCH

SERVICE LIST

Administrative Judge
Peter B. Bloch, Chair
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge
Thomas D. Murphy
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Charles A. Barth, Esq.
Office of General Counsel
U.S. N.R.C.
Washington, D.C. 20555

Administrative Judge
James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ernest L. Blake, Jr.
David R. Lewis
SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037

Office of the Secretary
Attn: Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555