

Official Transcript of Proceedings
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, October 11, 1995

Work Order No.: NRC-359

Pages 15512-15554

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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)
: ASLEP No. 93-671-01-OLA-3

-----X

Wednesday, October 11, 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 2:00 p.m.

BEFORE:

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

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WASHINGTON, D.C. 20005

1 APPEARANCES:

2
3 On Behalf of the NRC:

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13 On Behalf of the Licensee:

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1 APPEARANCES (Continued):

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10

11 On Behalf of the Intervenor:

12

13 MICHAEL D. KOHN, ESQ.

14 STEPHEN M. KOHN, ESQ.

15 MARY JANE WILMOTH, ESQ.

16 of: Kohn, Kohn & Colapinto, P.C.

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20

21 ALSO PRESENT:

22 ALLEN MOSBAUGH

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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>
3	Board's 12 Tape 58 & enhanced Tape 58	15554	15554
4	GPC's II-104 Transcript of Tape 32	*	15521
5	GPC's II-129 Work req. prgm procedure	*	15521
6	Int II-19A	*	15548
7	Int II-39A OI report	15549	
8	Int II-52 Pages from Shipman notebook	*	15519
9	Int II-66 Hairston phone log	*	15521
10	Int II-97 Excerpt McCoy Depo. (9/90)	*	15530
11	INTERVENOR'S II-108 DENIED ADMITTANCE ON PAGE 31.		
12	Int II-111 GPC II-136	*	15542
13	INTERVENOR'S II-118 WITHDRAWN ON PAGE 15548.		
14	INTERVENOR'S II-172 WITHDRAWN ON PAGE 15518.		
15	INTERVENOR'S II-178 WITHDRAWN ON PAGE 15518.		
16	INTERVENOR'S II-189 WITHDRAWN ON PAGE 15518.		
17	INTERVENOR'S II-213A WITHDRAWN ON PAGE 15518.		
18	INTERVENOR'S II-238 DENIED ADMITTANCE ON		
19	PAGE 15543.		
20	Int II-272 Glenn Deposition Pages 8-11	15521	15522
21	BOUND INTO TRANSCRIPT FOLLOWING PAGE 15522		
22	LIST OF STIPULATIONS ATTACHED TO INT II-272		
23	BOUND INTO TRANSCRIPT FOLLOWING PAGE 15522		
24	Staff II-68 generic letter	*	15521
25	*Previously marked for identification.		

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P-R-O-C-E-E-D-I-N-G-S

(2:32 p.m.)

1
2
3 CHAIRMAN BLOCH: This is a procedural
4 conference in the Vogtle case, license amendment
5 proceeding. Judge Carpenter has chosen not to be here
6 with Judge Murphy and myself.

7 Parties are represented by counsel. And I
8 don't think we need to identify parties for the record at
9 this point. So let's proceed with the items for the Board
10 to resolve or to state for the record the agreements of
11 the parties.

12 MR. LEWIS: Your Honor, perhaps a good
13 starting point is the transcript of last Friday's
14 conference. At that time there were a number of open
15 items identified. This is on Transcript Page 15,509.

16 A number of those we have resolved. There are
17 a few additions. But let me just identify the exhibits
18 that were at issue. They were II-97, II-108, II-111,
19 II-114, II-172, II-178, II-213A, II-238, and II-189.

20 CHAIRMAN BLOCH: And these are all intervenor
21 numbers. Is that correct?

22 MR. LEWIS: These are all intervenor exhibits.
23 The resolutions that we have reached so far, there's no
24 disputes about II-111. In fact, that same exhibit was
25 already introduced as GPC Exhibit 136. Intervenor would

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1 also like to have it admitted under this number, simply
2 because he's referred to it that way in the transcript a
3 number of places.

4 CHAIRMAN BLOCH: Granted. It should be marked
5 and admitted. Well, how are we going to handle this
6 mechanically?

7 MR. MICHAEL KOHN: It was previously marked,
8 Your Honor, I believe.

9 CHAIRMAN BLOCH: All right. So what we're
10 going to do is have GPC 136 also marked as 111. Is that
11 correct?

12 MS. YOUNG: No.

13 CHAIRMAN BLOCH: As Intervenor 111?

14 MR. MICHAEL KOHN: I don't have any objection
15 to doing that if the document is doubly marked.

16 CHAIRMAN BLOCH: Was it already marked as an
17 intervenor exhibit?

18 MR. MICHAEL KOHN: Yes.

19 CHAIRMAN BLOCH: All right. Then it's
20 admitted. That's all.

21 (Whereupon, the aforementioned
22 document, having previously been
23 marked for identification as
24 Intervenor's Exhibit Number II-111,
25 was received in evidence.)

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1 MR. LEWIS: We've agreed that II-172 will not
2 be admitted. Intervenor has agreed to withdraw that
3 exhibit. Intervenor is also not seeking the admission of
4 exhibits II-178, II-189, II-113A.

5 MS. YOUNG: 213A.

6 MR. LEWIS: Beg your pardon. II-213A.

7 MR. MICHAEL KOHN: With respect to 213A, that
8 document stands to place the parties on notice as to the
9 scope of the facts in the MWOs identified in that exhibit
10 and are attachments to Mr. Hanfinger's affidavit as to how
11 intervenor intends to argue data contained in those MWOs.

12 CHAIRMAN BLOCH: Is that agreed?

13 MR. LEWIS: Yes.

14 CHAIRMAN BLOCH: It's acceptable.

15 MR. LEWIS: With respect to Intervenor Exhibit
16 238, we understood that intervenor was not going to go
17 forward with that exhibit, but there's now some dispute
18 about data that was underlying that exhibit. And I think
19 we'll need to argue about the underlying data.

20 That leaves at issue Intervenor Exhibits
21 II-97, II-108, II-114.

22 CHAIRMAN BLOCH: And 238.

23 MR. LEWIS: And II-238. Intervenor has also
24 added one additional item. That's Intervenor Exhibit
25 II-52, which is pages of Mr. Shipman's notebook. Both

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1 licensee and I believe the staff position will correct me
2 that we would allow this to be admitted with the
3 understanding that it's only being admitted to the extent
4 discussed by Mr. Shipman during his cross-examination.

5 MR. MICHAEL KOHN: That's agreed to by
6 intervenor.

7 CHAIRMAN BLOCH: So that's granted. We're
8 admitting, therefore, II-52 for this limited purposes.

9 (Whereupon, the aforementioned
10 document, having previously been
11 marked for identification as
12 Intervenor's Exhibit Number II-52,
13 was received in evidence.)

14 MR. LEWIS: Before we proceed to the four
15 exhibits, then, that we have disagreement over, there are
16 four additional items. Intervenor distributed lists of
17 exhibits and in his best effort determine whether admitted
18 or not, the staff and licensee had looked at them and gone
19 over and compared notes. And there are four items out of
20 that that have been discussed. And we have agreed to
21 admit four additional items into the record.

22 CHAIRMAN BLOCH: The items that are agreed
23 are?

24 MR. LEWIS: Intervenor Exhibit II-66, which
25 was previously marked and is a phone log of Mr. Hairston;

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1 GPC Exhibit II-104, which is a transcript of Tape 32; GPC
2 Exhibit II-129, which is a work request program procedure;
3 and Staff Exhibit II-68, which is the generic letter.

4 MS. YOUNG: The 814?

5 MR. LEWIS: Eight-fourteen. All of these
6 exhibits have been previously marked.

7 CHAIRMAN BLOCH: Those three exhibits may,
8 therefore, be admitted.

9 MR. LEWIS: Four?

10 CHAIRMAN BLOCH: Four?

11 MR. LEWIS: Intervenor II --

12 CHAIRMAN BLOCH: Okay. Four, II-66, II-104,
13 II-129, and Staff II-68?

14 MR. LEWIS: Yes, the second of the third being
15 GPC exhibits.

16 CHAIRMAN BLOCH: Oh, sorry about that. It's
17 GPC II-104 and GPC II-129.

18 MR. LEWIS: Yes. Let me do it again.

19 MS. YOUNG: Yes, yes.

20 MR. LEWIS: Intervenor Exhibit II-66, GPC
21 Exhibit II-104, GPC Exhibit II-129, and Staff Exhibit
22 II-68.

23 CHAIRMAN BLOCH: All four are admitted.
24 They're previously marked.

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1 (Whereupon, the aforementioned
2 document, having previously been
3 marked for identification as
4 Intervenor's Exhibit Number II-66,
5 was received in evidence.)

6 (Whereupon, the aforementioned
7 documents, having previously been
8 marked for identification as GPC's
9 Exhibits Numbers II-104 and II-129,
10 respectively, were received in
11 evidence.)

12 (Whereupon, the aforementioned
13 document, having previously been
14 marked for identification as Staff's
15 Exhibit Number II-68, was received
16 in evidence.)

17 MR. MICHAEL KOHN: The parties have also
18 reached -- Georgia Power has stipulated to a statement
19 concerning testimony that would have been received from
20 Mr. Glenn. And included in that is a portion of a
21 deposition of Mr. Glenn, which intervenor now seeks to
22 mark as Intervenor's II-272, which would be Pages 8
23 through 11 of Mr. Glenn's deposition of August 23, 1990 in
24 the Hobby labor proceeding.

25 CHAIRMAN BLOCH: It may be marked and bound

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1 into the transcript.

2 (Whereupon, the aforementioned
3 document was marked for
4 identification as Intervenor's
5 Exhibit Number II-272.)

6 CHAIRMAN BLOCH: Is there any objection to its
7 admission?

8 MR. LEWIS: No. This was the stipulation that
9 we had previously reached and reported orally to the
10 Board.

11 CHAIRMAN BLOCH: It is admitted.

12 (Whereupon, the aforementioned
13 document, having previously been
14 marked for identification as
15 Intervenor's Exhibit Number II-272,
16 was received in evidence.)

17 MR. MICHAEL KOHN: The stipulation is a
18 one-page document which will accompany the deposition of
19 Mr. Glenn.

20 CHAIRMAN BLOCH: And so it also may be bound
21 in at the same place in the record. Intervenor will be
22 responsible for providing the copies to the reporter.

23 MR. MICHAEL KOHN: Yes, Your Honor.

24 MR. LEWIS: That brings us to the four
25 disputed items.

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STIPULATION OF GEORGIA POWER COMPANY

Lee Glenn is the manager of the Georgia Power Corporate Concerns Program. The Corporate Concerns Program was governed by written corporate procedures and guidelines. Mr. Glenn testified about these procedures during his August 23, 1990 deposition in the Hobby labor case, 90-ERA-30, pp. 8-11. This deposition testimony is included in the record of this proceeding as Intervenor's Exhibit II-272.

First page of Intervenor's Exhibit II-256 is the sign-off sheet from the Corporate Concerns file corresponding to FAVA and other issues raised by Allen Mosbaugh. This sign-off was not completed to close out the concern. Similarly the sign off for the Quality Concerns file, Intervenor's Exhibit II-231, was not completed.

1 UNITED STATES OF AMERICA
2 BEFORE THE U.S. DEPARTMENT OF LABOR

3 MARVIN B. HOBBY,)
4 Complainant,) CIVIL ACTION
5 vs.) FILE NO.
6 GEORGIA POWER COMPANY,) 90-ERA-30
7 Respondent.)

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14 DEPOSITION OF
15 LEE BROWN GLENN
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23 BULL & ASSOCIATES
24 COURT AND DEPOSITION REPORTERS
25 4651 Roswell Road, N.E., Suite F-504
Atlanta, Georgia 30342
(404) 256-2886

1 Deposition of LEE BROWN GLENN
2 taken on behalf of the Complainant,
3 for the purpose of discovery, upon
4 cross-examination, before Susan E.
5 Reynolds, Registered Professional
6 Reporter, Certified Court Reporter
7 and Notary Public, at the Candler
8 Building, 127 Peachtree Street,
9 N.E., Suite 1400, Atlanta, Georgia,
10 commencing at approximately
11 10:00 a.m., Thursday, August 23,
12 1990.

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1 A No, I do not.

2 Q Okay. What is the corporate
3 concerns procedure? Is it a manual?

4 A It is one of any number of
5 procedures in the corporate guidelines,
6 procedures and guidelines, which the company
7 issues and keeps up-to-date. In addition to
8 that, I will say that we have an internal
9 operating procedure which gets into more
10 specifics on how we do things. So maybe I
11 should differentiate between the two. There is
12 a corporate concern procedure in the corporate
13 guidelines. There is an internal procedure
14 that we use that governs our day-to-day
15 operations.

16 Q Are you familiar enough with the
17 internal operating procedure where you can tell
18 me what it is rather than having to refresh
19 your recollection with the documents?

20 A I believe so, yes.

21 Q All right. If a complaint is made
22 why don't you go through the procedure with me
23 from when someone initially contacts you to
24 what happens from then on.

25 A When someone contacts us, and a

1 typical example would be by phone, we would
2 take down the specifics of the issues, get as
3 much information as we possibly could from the
4 individual, identify what the circumstances are
5 relative to if the issue has already been
6 addressed to management or whether the employee
7 is extremely concerned about confidentiality
8 and desires not to have their name involved in
9 it, that type of issue would be resolved.

10 Once we had that information and
11 understanding on confidentiality, we would look
12 at the appropriate resources within the company
13 to investigate it. I have a staff reporting to
14 me that does a majority of the investigations.
15 However, there are a number of issues where the
16 other organizations within the company, such as
17 our internal auditing, or our security
18 department, or our equal employment opportunity
19 area, would be a more appropriate readily
20 available mechanism to address an issue. So
21 we make that determination and then the
22 investigation is initiated. If we are doing
23 the investigation we get in touch with the
24 appropriate people involved in the issue on all
25 sides of the management, employees, whoever

1 might be able to shed some relevant facts on
2 it.

3 Based upon the investigation, review
4 of documentation, whatever is available, we
5 make a determination on the allegation as to
6 whether there is a problem, not a problem. If
7 there is, of course, we would pursue with the
8 management and the affected area corrective
9 action. If there's not a problem we will
10 report that back to the individual who
11 contacted us if we know who they are.
12 Obviously an anonymous concern is a
13 little more awkward, or less doable, unless
14 they call us back.

15 Once we've reviewed it with the
16 submitter, if they are unable to identify
17 anything that we have missed or express
18 satisfaction then that would be the conclusion
19 it. Of course, if they identify a weakness in
20 what we have looked at or lack of communication
21 or whatever else, we would go back and do
22 additional investigation. Ultimately we reach
23 a point where we are quite satisfied that the
24 issue has been addressed appropriately, the
25 corrective action has been taken, if

1 appropriate, and we would pursue closure of the
2 concern through a review process which would
3 include my review of the file. Historically
4 there has been a 100 percent review of each
5 file by the law firm, a representative of the
6 law firm. As of a few weeks ago that procedure
7 was changed where we no longer have a 100
8 percent review by the law firm.

9 Ultimately the concern would be
10 closed by a corporate officer's review of the
11 issues in response and then in certain cases it
12 would even require the review and approval of
13 the member of our management council or the
14 senior management team in the company.
15 Examples of when management council members
16 would become involved would be if the submitter
17 were dissatisfied with the response we gave
18 them, they would receive all those concerns,
19 they would also see other concerns that we
20 identified as being of specific importance,
21 or significance, in terms of the issue that was
22 addressed.

23 Q Okay. And what is the law firm that
24 reviews?

25 A It's Troutman and Sanders.

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C E R T I F I C A T E

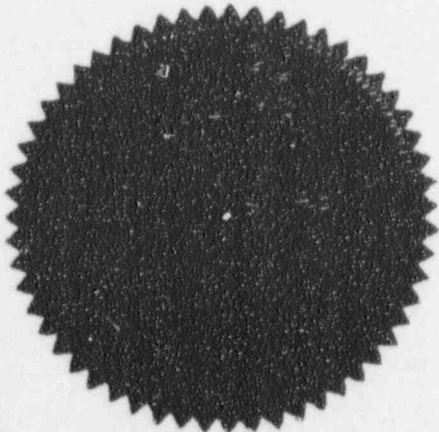
GEORGIA:

FULTON COUNTY:

I hereby certify that the foregoing deposition was stenographically recorded by me, as stated in the caption. The deponent was duly sworn to tell the truth, the whole truth, and nothing but the truth. The colloquies, statements, questions, and answers thereto were reduced to typewriting under my direction and supervision; and the deposition is a true and correct record of the testimony/evidence given by the deponent.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I financially interested in this action.

This 7th day of September, 1990.



Susan Reynolds

SUSAN E. REYNOLDS, R.P.R.,
Certified Court Reporter
(B-1231) and Notary Public.
My commission expires
August 24, 1991.

1 MR. MICHAEL KOHN: There's one other matter,
2 which is the parties have agreed to come up with a final
3 list of exhibits. And intervenor did as he promised,
4 faxed a 66-page document setting forth all the exhibits.
5 The parties have been working through that. That is,
6 earlier today when the Board came in, you observed us
7 still working through those.

8 There are a few outlying issues on this list
9 which have not been totally resolved, but it appears that
10 we have identified hopefully all of the outstanding
11 issues. But we have not come to a final resolution of
12 this list, which I understand the parties will agree to
13 and submit to the Board.

14 CHAIRMAN BLOCH: The Board appreciates the
15 progress on that list.

16 MR. MICHAEL KOHN: Now, if I might turn to the
17 exhibits Mr. Lewis had previously identified, Intervenor's
18 Exhibit 97. It is a portion of Mr. McCoy's Department of
19 Labor deposition taken in the Mosbaugh labor case. And it
20 was taken in September of 1990, less than five months
21 after the April 19 event. And it is the earliest recorded
22 statement of Mr. McCoy as to his recollection of those
23 events.

24 In particular, we're looking at his statement
25 as to what he understood Mr. Mosbaugh to have raised to

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1 management on April 19, 1990. That is, his understanding
2 was that Mr. Mosbaugh said the April 9th letter contained
3 false information and that the draft LER that was about to
4 be submitted also contained false information, but it is
5 clear in that he understood the April 9th letter was
6 false.

7 CHAIRMAN BLOCH: Was this document used in
8 cross of Mr. McCoy?

9 MR. MICHAEL KOHN: It was not. The cross of
10 Mr. McCoy was not able to be recalled by intervenor. And,
11 for that reason, we believe it should be introduced as the
12 best evidence available.

13 CHAIRMAN BLOCH: Georgia Power's response?

14 MR. LEWIS: Your Honor, Mr. McCoy was
15 available for cross-examination on the diesel generator
16 reporting issues. Intervenor had a full opportunity to
17 cross-examine him. He provided testimony on this issue.

18 I think this is untimely. I think that this
19 deposition should not be -- and it's only two pages that
20 intervenor is seeking to admit. I don't think those pages
21 should be admitted without Mr. McCoy having had an
22 opportunity to explain them. And I don't think that's
23 practical at this late date.

24 The testimony in these two pages is very
25 vague. This was a deposition on a different topic, on

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1 whether Mr. Mosbaugh was retaliated against and not about
2 the diesel generator reporting issues.

3 The questions and the answers were vague. The
4 testimony itself doesn't indicate whether Mr. McCoy is
5 talking about April 19th or April 30th. And I think if
6 you look at these two pages you'll see that it's very
7 vague testimony that I think is really subject to misuse
8 unless the witness was available to be questioned on it
9 and explained what he was saying and what he meant.

10 CHAIRMAN BLOCH: A quick rebuttal?

11 MR. MICHAEL KOHN: I don't believe it's vague.
12 I think that the testimony speaks for itself, but I also
13 would like to note that Mr. Hairston was specifically
14 asked on 7-13-95, on Transcript Pages 9,249 through 9,252
15 or thereabouts, as to what Mr. McCoy's belief was with
16 respect to what happened on April 19th. And Mr. Hairston
17 answered, "I can't answer your question for you. So to
18 the extent that we were able to question other witnesses
19 to fall into the category of Mr. McCoy, they were not able
20 to provide the answer." That is a quote from Mr.
21 Hairston.

22 CHAIRMAN BLOCH: What about the argument that
23 the successful start stuff had been fully litigated and it
24 was not that part of the case that you lost Mr. McCoy on?

25 MR. MICHAEL KOHN: We, I believe, submitted a

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1 subpoena for Mr. McCoy. We never rested on one specific
2 area or not. That was in a very beginning phase. He was
3 maybe the second witness to appear at this case. And
4 intervenor did not rest his case.

5 And with respect as the facts developed as to
6 what Georgia Power understood, it becomes essential to the
7 record. And it becomes important to intervenor's rebuttal
8 to Georgia Power's case in chief, which was put on first.

9 So it's not something that we could have done
10 before that because the actual record wasn't even
11 established as to those events. And it's important that
12 we did question Mr. Hairston specifically about this, the
13 factual information contained in this section of his prior
14 testimony.

15 CHAIRMAN BLOCH: Of Mr. McCoy's prior
16 testimony?

17 MR. MICHAEL KOHN: Yes.

18 CHAIRMAN BLOCH: And staff's position on this
19 document?

20 MS. YOUNG: I think GPC is correct that this
21 apparently is untimely. I disagree with him that the
22 transcript that's at issue is vague. I think it does
23 specifically indicate what Mr. McCoy did believe Mr.
24 Mosbaugh's understanding was about errors in both the
25 April 9th letter and the LER as of September 1990.

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1 So I don't think the document's vague. I do
2 think there is a problem in terms of intervenor being able
3 to establish its case in response to issues that were
4 raised both during the cross-examination of Mr. Mosbaugh,
5 which, if you recall, Mr. Blake asked a number of
6 questions about: Why do you believe certain people
7 understood that there was an error in the April 9th
8 letter? Why do you believe certain people thought that
9 there was an error in the April 19th letter?

10 This document, even though it was identified
11 as a part of their pre-filed exhibits in April of 1995,
12 probably could not have been used by Mr. Mosbaugh as part
13 of follow-up on Mr. Blake's cross because it didn't have
14 Mr. McCoy available. And we still don't have Mr. McCoy
15 available. And that's the problem with his submission.

16 So unless the Board were to find this fits
17 some exception to the more stringent hearsay rules; i.e.,
18 Mr. McCoy's unavailability should somehow make it possible
19 for intervenor to have this document admitted now, which
20 is on point to things that came up, both during GPC's
21 rebuttal case and intervenor's direct case.

22 CHAIRMAN BLOCH: Your position is that they
23 should have finished, intervenor should have finished,
24 with all matters related to successful starts when Mr.
25 McCoy testified?

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1 MS. YOUNG: No. I disagree only because this
2 was raised after Mr. Mosbaugh testified, which came after
3 Mr. McCoy testified. Mr. McCoy was unavailable with Mr.
4 Mosbaugh testified in July. He was ill, I believe. Maybe
5 I'm misunderstanding the sequence of events. So, again --

6 CHAIRMAN BLOCH: Is it the case that the sworn
7 statement is the best evidence of Mr. McCoy's earliest
8 recollection about these events?

9 MS. YOUNG: I have no idea without being able
10 to at least ask Mr. McCoy.

11 CHAIRMAN BLOCH: Do we have anything earlier
12 than this?

13 MR. MICHAEL KOHN: No. I'm certain that this
14 is the earliest sworn statement.

15 MR. LEWIS: Judge Bloch, I would like to make
16 an additional statement because there was some confusion
17 on the staff about what I was saying. When I said that
18 this document was vague, I meant it was vague about what
19 time frame Mr. McCoy was referring to when he was
20 providing these answers.

21 The question that was asked was, "Did Mr.
22 Mosbaugh tell you in April of 1990 that he believed there
23 were false statements made in the corrective action
24 letters to the NRC?" And it goes on to say, "I don't
25 remember him telling me that directly." That's just

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1 talking about April of 1990.

2 MR. MICHAEL KOHN: You're looking at 88 when
3 you should be looking at Page 89, --

4 MS. YOUNG: Yes.

5 MR. MICHAEL KOHN: -- which is where Mr. McCoy
6 says, "What I understand is that Allen brought this up to
7 Bill Shipman that he felt that was -- that what was in the
8 corrective action letter was in error and what was in the
9 LER that was being submitted was also he thought in
10 error."

11 And they key phrase is "was being submitted,"
12 indicating that it had not yet been submitted. So it
13 places the time frame of this communication with Mr.
14 Shipman and Mr. McCoy.

15 MS. YOUNG: And that answer goes on to explain
16 that they did a QA audit to determine what count was
17 correct. I mean, it's probative.

18 MR. LEWIS: -- really being compressed that --

19 MR. MICHAEL KOHN: It says, "As a result of
20 that." Then it goes on to state corrective actions that
21 Georgia Power stated. But I think that Georgia Power is
22 certainly free to argue anything they want with respect to
23 the exhibit, but the weight of it is something for the
24 Board to --

25 MR. LEWIS: I think the ambiguities, though,

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1 are very important because I think this is a very
2 ambiguous document. And, in fact, Mr. McCoy's direct
3 pre-filed testimony discussed what he remembers being told
4 on April 19th, what he learned from Bill Shipman.

5 That was right in his pre-filed testimony. I
6 think if intervenor wanted to explore it, they didn't have
7 to wait later until after Mr. Mosbaugh testified. They
8 should have cross-examined him at that time. It was
9 addressed in his testimony.

10 MR. MICHAEL KOHN: What Georgia Power is
11 saying is that intervenor should be prejudiced because Mr.
12 McCoy is no longer available. But if there is a prejudice
13 to happen, it's because it should be on the side of
14 Georgia Power, not on intervenor's side.

15 CHAIRMAN BLOCH: We'll take a brief recess.

16 (Whereupon, the foregoing matter went off the
17 record at 2:50 p.m. and went back on the
18 record at 2:52 p.m.)

19 CHAIRMAN BLOCH: In light of the argument, the
20 Board has decided that we will admit this document.

21 (Whereupon, the aforementioned
22 document, having previously been
23 marked for identification as
24 Intervenor's Exhibit Number II-97,
25 was received in evidence.)

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1 CHAIRMAN BLOCH: In light of Mr. McCoy's
2 health, if he has anything that he would like to say by
3 affidavit, in light of his inability to testify at this
4 time, we also would receive the affidavit for what it's
5 worth at this time.

6 We notice that this document is at a
7 particular point in time and at a particular context. So
8 the parties will feel free to argue that it is or is not
9 important to the case.

10 MR. MICHAEL KOHN: The next one I'm going to
11 discuss will be 111. We'll go down to 108. That's linked
12 to 114. So we'll do both of those together.

13 MR. LEWIS: 111 is in.

14 MS. YOUNG: Sure is.

15 MR. MICHAEL KOHN: Then I don't have to
16 discuss it. The next one --

17 MR. LEWIS: I agree we can do 108 and 114
18 jointly.

19 MR. MICHAEL KOHN: Yes. With respect to the
20 admission of 111, intervenor understands that it's being
21 admitted for the entire content of the document without a
22 limiting instruction.

23 MR. LEWIS: Intervenor Exhibit II-108 is a
24 Georgia Power --

25 CHAIRMAN BLOCH: One second.

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1 MR. MICHAEL KOHN: I'm on cross.

2 CHAIRMAN BLOCH: He made a comment about 111.

3 MR. MICHAEL KOHN: Eleven I was referring to.

4 MR. LEWIS: Oh, yes

5 CHAIRMAN BLOCH: Okay. Now on 108 and 114.

6 MS. YOUNG: The comment I don't agree with,
7 111 is being admitted for all purposes. Is that what you
8 just said, hen I thought part of the negotiation was that
9 it was to the extent discussed in the record?

10 MR. MICHAEL KOHN: Yes. Basically, intervenor
11 argued with Georgia Power that there had been so much
12 discussion on the false air on the weak air rolls that the
13 entire document should go in without a limiting
14 instruction because the record is sufficient for each
15 party to understand what that means in its entirety.

16 MR. LEWIS: We agreed to allow 111 to come in
17 because the same document was admitted as GPC Exhibit
18 II-136 without any limitation. It's already in the
19 record. It's already admitted.

20 MS. YOUNG: But I thought the standing rule
21 for all exhibits was to the extent discussed. That's
22 what's confusing me because this seemed to be different.

23 MR. MICHAEL KOHN: And I agree with you.

24 MS. YOUNG: And I don't recollect that that
25 happened at the time.

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1 CHAIRMAN BLOCH: Even the general admission of
2 136 would still be limited to how it was used in the
3 transcript.

4 MR. LEWIS: I think it would still be improper
5 for a party to surprise the other parties and raise issues
6 and matters that were never addressed.

7 MS. YOUNG: Yes.

8 CHAIRMAN BLOCH: Yes.

9 MS. YOUNG: What are we saying?

10 CHAIRMAN BLOCH: I don't think there's an
11 argument about this. It's admitted generally to the
12 extent that we've admitted anything generally, which is
13 always limited to how it's discussed in the record.

14 MR. MICHAEL KOHN: Okay. The next one is two
15 exhibits, Intervenor's II-108 and II-114. We're looking
16 at these together because they're very similar. II-108 is
17 Mr. McCoy's signed response, the demand for information
18 concerning Mr. Bockhold and --

19 MR. LEWIS: It's Georgia Power Company's DFI
20 response concerning Mr. Bockhold. Mr. McCoy signed it for
21 the company.

22 MR. MICHAEL KOHN: And 114 would be the same
23 with respect to Mr. Greene, Mr. Frediricks, Mr. Majors,
24 and some other --

25 MR. LEWIS: Mr. Horton.

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1 MR. MICHAEL KOHN: -- Mr. Horton. Intervenor
2 believes that these documents are needed for a complete
3 and accurate record. There was agreement to the parties
4 that exhibits would be admitted to the extent to
5 demonstrate that these documents were filed.

6 But I think the record on the individuals'
7 role and the factual information contained in this
8 document is of no surprise to anyone. So I don't see a
9 limiting instruction just to the fact that these documents
10 were filed as being appropriate.

11 Mr. McCoy, again, is the individual who signed
12 these documents and he is not available to be questioned
13 about. I believe with respect to Exhibit 108, we did
14 question the individual witnesses about the document and
15 about the content of the document. And often they would
16 testify that they couldn't state what facts were the basis
17 of certain things.

18 And it became clear at the conclusion of doing
19 the individuals that Mr. McCoy should be questioned with
20 respect to this exhibit, how it was prepared, and whether
21 he believed everything in it was accurate.

22 CHAIRMAN BLOCH: Okay. You can't do that
23 because he's not available. So what is it that you're
24 going to use the exhibits for without having Mr. McCoy
25 here?

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1 MS. YOUNG: And you said Intervenor 108. I
2 think you meant 114.

3 MR. MICHAEL KOHN: One-o-eight and --

4 CHAIRMAN BLOCH: Both of them I think he said.

5 MR. MICHAEL KOHN: -- 114.

6 MS. YOUNG: I thought only witnesses were
7 asked about 114 and not 108.

8 MR. MICHAEL KOHN: Excuse me. You are
9 correct. I'm not sure if they were asked about 108.

10 MS. YOUNG: One-o-eight was a response
11 concerning Bockhold?

12 CHAIRMAN BLOCH: One-fourteen the witnesses
13 were asked?

14 MR. MICHAEL KOHN: Right. One-o-eight I have
15 to quickly look at my notes to see if there was a
16 discussion.

17 CHAIRMAN BLOCH: So let's do them separately,
18 then. They were asked about 114. What do you want to use
19 these exhibits for?

20 MR. MICHAEL KOHN: Just to be placed in the
21 record to demonstrate what Georgia Power believed the
22 facts to be on the date they were submitted.

23 CHAIRMAN BLOCH: And the objection to that is?

24 MR. LEWIS: We agreed in the May 1995
25 stipulation that this document could be admitted to the

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1 extent it was discussed on the record. And that's still
2 our position. We're very concerned that we not see in
3 proposed findings some dispute over a statement that no
4 one has ever focused on or been questioned about.

5 CHAIRMAN BLOCH: All right. So, if I
6 understand, 114 may be admitted to the extent discussed in
7 the record. Is that correct?

8 MR. LEWIS: That's agreeable to us.

9 CHAIRMAN BLOCH: Mr Kohn?

10 MR. MICHAEL KOHN: The problem is the
11 witnesses were not the proper persons to question the
12 exhibit with. And some further questioning of Mr. McCoy,
13 as it turns out looking at the record, was something that
14 was necessary.

15 CHAIRMAN BLOCH: So in substitute of having
16 Mr. McCoy here, how are these exhibits going to help you?

17 MR. MICHAEL KOHN: Just Mr. McCoy signed it as
18 a representative of Georgia Power, stating that these
19 facts were believed to be accurate at the time they were
20 submitted to the purpose to demonstrate what Georgia Power
21 believed to be the facts accurate at the time submitted is
22 the only --

23 CHAIRMAN BLOCH: What is the relevance of
24 that? Are there certain facts that you intend to show
25 were not true?

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1 MR. MICHAEL KOHN: The record is very complex
2 at this point. I can't tell you that there has been
3 anything digested to that level. But I think for a
4 complete and accurate record, those documents should be in
5 there. And they should be able to speak for themselves.

6 CHAIRMAN BLOCH: Okay. But according to the
7 notice provisions that we had, you have to specify
8 precisely what you're going to use the documents for so
9 that there won't be a surprise about what to rebut.

10 So when are you going to be able to do that?

11 MR. MICHAEL KOHN: I think Tuesday of next
12 week.

13 CHAIRMAN BLOCH: Okay. You file it on
14 Tuesday. And if the Board feels that the subject matter
15 is relevant, we'll rule in your favor and the question of
16 notice will be taken care of. We would also since it
17 relates to Mr. McCoy's testimony make the same provision
18 that we made about 97, that he could file an explanatory
19 affidavit based on his inability to testify.

20 MR. MICHAEL KOHN: And if I would understand,
21 that the parties at this point do not agree to the
22 admission of 114 and 108 to the extent testified and to
23 demonstrate that these documents were filed.

24 CHAIRMAN BLOCH: There's no objection to 114
25 being used to the extent for which there's testimony. My

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1 understanding is from what the discussion has been that
2 there was no testimony on 108. Is that correct?

3 MR. MICHAEL KOHN: One-o-eight, the content
4 was testified through using the NRC's demand for
5 information or the witnesses were questioned oftentimes
6 using NRC documentation for the same information that was
7 contained in their demand for information.

8 So we were looking for a limiting instruction
9 on 108 to the extent -- and it's my understanding that the
10 parties had previously agreed that 108 would go in to
11 demonstrate that the document was filed. And that was the
12 limiting instruction that we had previously agreed to in
13 my understanding before we started today. And I'm still
14 --

15 CHAIRMAN BLOCH: You're only asking that 108
16 be admitted to the extent that you can show that it was
17 filed?

18 MS. YOUNG: And the parties didn't agree to
19 that because all you have to do is to say, "The parties
20 now stipulate that a document entitled" blank "was filed
21 on" X date.

22 What intervenor is attempting to do is to cure
23 his failure to pursue cross of a number of witnesses, Mr.
24 Greene, Mr. Fredirick, Mr. Horton, during the initial
25 phase of the proceeding. And it just seems improper at

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1 this stage to bootstrap that failure by having the entire
2 document come in for all purposes, which I think
3 intervenor is suggesting or even he may be suggesting that
4 there's some failure on the part of Mr. McCoy to act in a
5 responsible manner.

6 I thought Mr. Blake for GPC had argued with
7 the Board on numerous occasions that the DFI responses
8 should not be used to identify new inconsistencies or new
9 errors on the part of GPC, that they were only relevant
10 with respect to what had happened in 1990.

11 So what intervenor is attempting to do is
12 extremely problematic in terms of notice to the licensee
13 and to the staff from --

14 CHAIRMAN BLOCH: Let me see if I understand
15 what the motion is, though. You only want Mr. Kohn to be
16 able to have 108 admitted not for its content at all, but
17 just to demonstrate that it was filed?

18 MR. MICHAEL KOHN: Well, I would want it in
19 for its content. But at this point my understanding was
20 that the parties were agreeing that 108 could be admitted
21 to demonstrate that it had been filed, just for a complete
22 and accurate record.

23 I would like to have an opportunity to argue
24 with respect to Exhibit 108, the same as we can argue with
25 respect to Exhibit 114, file that also on Tuesday.

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1 And I think ultimately the only facts that we
2 would be looking at that are contained in these documents
3 are the facts that are on the record currently in this
4 proceeding and to any extent that there may be
5 contradictions in the records contained in that document
6 and the facts established on the record.

7 I think that the document itself speaks
8 clearly as to whether that would, in fact, be the case.
9 But intervenor does not have at this juncture a -- if Mr.
10 McCoy was present, we would ask him, "Did you sign these
11 documents? Is there any fact in it that you do not
12 believe is true and accurate? So you believe that all of
13 this was accurate?" And assuming he would answer "Yes,"
14 then we would have established the factual basis for
15 admitting the document.

16 We are unable to do that because Mr. McCoy,
17 unfortunately, can't reappear as a witness. So the only
18 thing we're looking for is to the extent there are factual
19 statements contained in these documents, which are now
20 counter to Georgia Power's position, we think is relevant
21 to show a pattern as it would be with respect to responses
22 to the OI report and things of that nature. It's just
23 going in for that same level.

24 We're not looking to find any new false
25 statements. We're looking at the statements that have

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1 already been identified in there. And there are
2 statements as to why or why not those statements are
3 accurate.

4 CHAIRMAN BLOCH: Yes, Mr. Lewis?

5 MR. LEWIS: I don't understand the
6 intervenor's representation that they're not looking for
7 additional false statements. I thought I understood him
8 just two minutes ago to be indicating he wanted to look at
9 these statements in order to indicate this statement that
10 he made in 1994 may now be inaccurate. And it sounds
11 like, in fact, what they want to use is to point to some
12 statements of these documents in order to impeach Mr.
13 McCoy when he's really not present to defend himself.

14 I don't know if there are any inconsistencies
15 between the record and the 1994 DFI responses. It's
16 certainly possible given the fact that we have now been
17 through months of hearing and cross-examination. There
18 very well could be some new fact that's developed or some
19 fact that's now become recognized by Georgia Power.

20 I think that if the particular statements had
21 been brought up during the hearing so that everyone was
22 aware that intervenor was focused on them, then we could
23 have addressed them during the hearing.

24 I think simply identifying these additional
25 statements are things we're now interested in after the

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1 fact is really a very inadequate procedure. It really
2 doesn't allow us to assess the evidence that we need to
3 put on.

4 CHAIRMAN BLOCH: Ms. Young?

5 MS. YOUNG: Again, this seems like an attempt
6 to fill in some failure to do something on cross. And to
7 that extent it's improper if this document hasn't been
8 discussed with witnesses on the record.

9 I have no doubt that Mr. McCoy if brought in
10 would say, "Yes, I believe these facts were true when I
11 filed them. Yes, I signed the letter." Intervenor
12 represents that somehow that makes the document come in
13 for all purposes, and that's not been the standard
14 followed in this case.

15 It's only been to the extent there have been
16 questions on the contents of the document. So if there
17 are no questions in our record regarding the contents of
18 the document, then it can't come in for all purposes. So
19 intervenor's motion on its face should be denied.

20 CHAIRMAN BLOCH: Given that 108 was not
21 discussed with any witness, it doesn't fall in the same
22 class as 114. And we will not admit it.

23 You may, however, in your motion show clear
24 reason why it's necessary for an adequate record. That's
25 a higher standard. It's one that we will employ in our

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1 discretion only if we're convinced that not using it would
2 make the record incomplete.

3 MR. MICHAEL KOHN: Thank you, Your Honor.

4 I believe the last document we were looking at
5 would be Intervenor's II-238. First, intervenor does not
6 call for the admission of II-238. That is a demonstrative
7 aid that was prepared.

8 The only aspect we want with respect to that
9 document is that the underlying factual data in this case
10 it's limited to I believe two pages of a previously
11 identified document, Intervenor's Exhibit II-115. And so
12 we would be looking for the inclusion of data contained I
13 believe on Pages 3 and 5 of that document.

14 That data indicates a failure of Calcon
15 sensors up and through 1992, I believe. That is the only
16 --

17 CHAIRMAN BLOCH: What is the relevance of the
18 continued failure other than in 1990?

19 MR. MICHAEL KOHN: Well, as I understand it,
20 that through the end of 1990, I think everyone would agree
21 that it would be relevant. To the extent that it goes
22 past 1992, I think that I'm willing to cut it off at 1990.

23 CHAIRMAN BLOCH: This is Calcon sensor data
24 drawn from what sources?

25 MR. MICHAEL KOHN: From an NRC inspection

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1 report, Intervenor's II-115.

2 CHAIRMAN BLOCH: Okay. Is there any objection
3 to the use of that report to the extent that it's limited
4 to 1990?

5 ADMINISTRATIVE JUDGE MURPHY: Excuse me. Is
6 115 on the record and admitted?

7 MR. MICHAEL KOHN: Yes, Your Honor.

8 MS. YOUNG: But not in its entirety. There
9 were only certain paragraphs. It's also a --

10 MR. MICHAEL KOHN: The ruling of the Board was
11 to the extent 115 was to be admitted, we had to identify
12 what portions we wanted admitted. It would be a step by
13 step analysis.

14 This document put the parties on notice as to
15 what portion we wanted admitted and for the purpose we
16 wanted admitted. So we're now seeking to admit those
17 pages of that exhibit.

18 CHAIRMAN BLOCH: So you want it admitted
19 through the end of 1990 to the extent that it's identified
20 as useful by the demonstrative aid?

21 MR. MICHAEL KOHN: Yes, Your Honor.

22 MR. LEWIS: First of all, I don't understand
23 the relevance at all of the demonstrative aid trying to
24 show what were the number of Calcon sensor failures. We
25 already have that information in the record. We already

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1 have in the record the compilation of the Calcon history
2 that Mr. Briney prepared and gave to the NRC.

3 The inspection report that intervenor seeks to
4 have admitted is a 1994 inspection report that really
5 looked at intervenor's root cause allegation, which the
6 Board has ruled was outside the scope of this proceeding.

7 Even when I look at Pages 3 and 5, those pages
8 contain a great deal of information that's --

9 CHAIRMAN BLOCH: Let me interrupt. Mr. Kohn,
10 to what extent is the inspection report inconsistent with
11 the information Mr. Briney provided and that is in the
12 NUREG?

13 MR. MICHAEL KOHN: Well, what's in the NUREG
14 is specifically identified in the demonstrative aid. So
15 we know what's in the NUREG. And that was already
16 considered.

17 There's additional documentation in this
18 Intervenor's II-115. I have not cross-compared in with
19 Mr. Briney. Mr. Briney's document came in after the fact.
20 And, in fact --

21 CHAIRMAN BLOCH: After what fact?

22 MR. MICHAEL KOHN: After Intervenor's II-115
23 was admitted and we've never attempted to cross-compare
24 what MWOs and documentation are set forth in Mr. Briney's
25 list as to what's in the NRC inspection report.

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1 CHAIRMAN BLOCH: So you want it admitted, even
2 though you don't know whether it's at all different from
3 what's in the record?

4 MR. MICHAEL KOHN: Well, I think we went
5 through it and determined what is in the inspection report
6 so we have a known quantity of the information. To the
7 effect that --

8 CHAIRMAN BLOCH: Unless it's different from
9 what's already in the record, it's repetitious.

10 MR. MICHAEL KOHN: I understand, Your Honor.

11 CHAIRMAN BLOCH: If you don't know whether
12 it's repetitious, we won't admit it.

13 MR. MICHAEL KOHN: Your Honor, I do not
14 believe that the Briney documentation contains the factual
15 data needed. That's my recollection, that the Briney
16 document would limit it to MWOs. And I don't really --

17 CHAIRMAN BLOCH: Unless the staff objects, we
18 will not admit this document. But you may make it the
19 subject of a motion that it's necessary for an adequate
20 record, which means you're going to have to show why
21 something important is added by this information.

22 Does the staff object to that rule?

23 MS. YOUNG: No.

24 CHAIRMAN BLOCH: I think that finishes the
25 documents. Is that correct?

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1 MR. LEWIS: I believe so, Your Honor.

2 MR. HULL: There are some tape transcripts,
3 unfortunately. Your Honor, Intervenor's Exhibit II-118 is
4 not in evidence. We had admitted into evidence an
5 alternate version, which had been agreed upon. So I'm
6 going to remove that Intervenor Exhibit II-118 from the
7 tape notebook since it's not in evidence.

8 With respect to --

9 MR. MICHAEL KOHN: Hold up. Let us catch up
10 with you, please.

11 MR. HULL: I had discussed this with Mary Jane
12 earlier today.

13 CHAIRMAN BLOCH: Okay. But they need a little
14 time. Just go a little slower.

15 MS. YOUNG: Yes. Should we take a break?

16 CHAIRMAN BLOCH: Are we prepared to proceed
17 with this on the record?

18 MR. MICHAEL KOHN: I'm not. Mary Jane may be.
19 So I think it may be best to take a short recess.

20 CHAIRMAN BLOCH: All right. We will take a
21 recess of no more than 10 minutes. It's now 3:10. We'll
22 be starting at 3:20.

23 (Whereupon, the foregoing matter went off the
24 record at 3:10 p.m. and resumed at 3:20 p.m.)

25 CHAIRMAN BLOCH: Parties have a statement

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1 about transcripts of tapes?

2 MR. HULL: Yes. With respect to tapes, Your
3 Honor, since Intervenor Exhibit II-118 has not been
4 admitted, we will be removing that exhibit from the
5 notebook.

6 What was previously marked and admitted into
7 evidence as Intervenor II-19A, I had withdrawn that
8 exhibit, mistakenly it turns out, on October 6. And I
9 would now like to move that document back into evidence.

10 And there's no objection from the other
11 parties on that. It's the --

12 CHAIRMAN BLOCH: It's granted.

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

18 MR. HULL: GPC Exhibit II-109 was not
19 admitted. So the staff will be removing that exhibit from
20 the notebook.

21 And the only remaining tape transcript item
22 that staff is aware of is now Intervenor's Exhibit II-247,
23 which is the Tape 99B transcript. And there's a pending
24 motion on that. So until that's resolved, we won't be
25 able to finalize the notebook.

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1 CHAIRMAN BLOCH: My understanding is that
2 there are no further documents to discuss today. Mr.
3 Kohn, that's not correct?

4 MR. MICHAEL KOHN: Yes. One thing I did
5 forget. Speaking with Mr. Lamberski, who isn't here --

6 CHAIRMAN BLOCH: How were you doing that?

7 MR. MICHAEL KOHN: Over the phone. We're on
8 talking terms these days.

9 Basically, Intervenor's Exhibit 39 was the OI
10 report. It did not contain a list of exhibits. We
11 thought it would be better for the record that the list of
12 exhibits in the OI report should be included, which is
13 Pages 105 through 111 of the OI report. So we would like
14 to supplement Intervenor's Exhibit 39 with this list of
15 exhibits.

16 CHAIRMAN BLOCH: And my understanding is that
17 the list of exhibits is a reference source, not new
18 evidence. Is that correct?

19 MR. MICHAEL KOHN: That is correct.

20 MS. YOUNG: Can we mark it as Intervenor's 39A
21 and give out copies now?

22 MR. MICHAEL KOHN: Certainly.

23 MS. YOUNG: Because I think that's probably
24 the best way to do it.

25 CHAIRMAN BLOCH: So Intervenor's Exhibit 39A

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1 may be marked. It will not be admitted in evidence.

2 (Whereupon, the aforementioned
3 document was marked for
4 identification as Intervenor's
5 Exhibit Number II-39A.)

6 CHAIRMAN BLOCH: And intervenor will provide a
7 copy to the reporter, copies.

8 Is there any other further business of the
9 parties?

10 (No response.)

11 CHAIRMAN BLOCH: Okay. There being no other
12 business of the parties, I want to make a brief statement
13 about findings. We have encouraged and want to continue
14 to encourage that the findings be in the form of a
15 proposed initial decision for the Board. And there is an
16 art to writing those decisions. And they do not all
17 follow exactly the same formula, but I want to say what I
18 think. I do want to write those opinions so that the
19 parties might be helped by that.

20 I'd suggest starting with a summary of the
21 findings and the principal reasons for those findings.
22 And while it's not necessary that the facts necessarily be
23 documented within the summary, it is necessary that all of
24 the facts be buttressed by thorough documentation
25 elsewhere in the decision.

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1 There ought to be a portion of the decision
2 that deals with arguments of the parties. Sometimes the
3 parties disagree about a global view, in which case there
4 could be a large argument of one of the parties which is
5 rebutted only by a global view of another party.

6 And sometimes disagreements are about bits of
7 the record, in which case you want to display those bits
8 side by side because after having presented the arguments
9 of the parties, either globally or bit by bit, you then
10 want to propose conclusions of the Board on each of the
11 disputes among the parties, whether they're global or on
12 particular facts.

13 If there are other issues that the parties
14 want to dispute, not being able to anticipate whether we
15 would adopt the reasoning of the proposed decision, they
16 can also be disputed. So you can file additional findings
17 on other issues that are not included within the proposed
18 decision. That's kind of like a fallback position so we
19 could get to those if we need to because we followed a
20 different train of reasoning.

21 I believe we stated at one point that we would
22 be looking to this portion of the record to see within
23 this phase whether there's anything that helps to bring
24 light to whether or not there was an illegal transfer.

25 And so findings could be included which say

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1 nothing having to do with successful starts or air
2 quality, has nothing to do with illegal transfer. There's
3 no showing within that that there was illegal transfer or,
4 to the contrary, that here's how it was done and this is
5 why it represents illegal transfer.

6 The Board is impressed that in this context
7 we've learned a lot of specifics about the dynamics of how
8 particular important issues were handled. And we have
9 been reflecting whether or not it shows anything
10 additional about illegal transfer. So the parties may be
11 wanting to help us in that area.

12 Are there any questions of the parties about
13 the suggestions of the Board on proposed decision?

14 MR. MICHAEL KOHN: How would the Board like
15 the parties to deal with the credibility issues?

16 CHAIRMAN BLOCH: Well, they are within the
17 context of whatever the parties are disagreeing about. I
18 mean, obviously one party is going to state that a
19 particular witness is credible in a certain way.

20 And another party may disagree about that.
21 So, basically, you're disagreeing about what the basic
22 facts are. And one of the reason you disagree is because
23 of the way you assess the credibility of a particular
24 witness or of groups of witnesses.

25 MR. MICHAEL KOHN: Is there any reason at this

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1 point to address what any party would look at, culpability
2 of individuals of Georgia Power Company, or is that
3 something that should be saved for a later briefing?

4 CHAIRMAN BLOCH: I don't see that that's
5 relevant to the overall issue of whether or not to either
6 allow transfer or to condition transfer except as a
7 sub-issue of showing that X, Y, and Z did certain things
8 and, as a result of that, Georgia Power was culpable or
9 that they didn't do those things.

10 MS. YOUNG: The Board has made a lot of
11 statements about the remedy phase. Was it the Board's
12 anticipation that the decision as proposed by the parties
13 would contain a proposed schedule for a remedy phase if
14 that's the way the conclusion of that --

15 CHAIRMAN BLOCH: I think we would get to the
16 content of the remedy phase if it's necessary. What's
17 really important here is that there be findings about
18 whether or not a remedy phase is necessary.

19 I can repeat what I've said over and over
20 again about liking tables and charts, which makes things
21 as clear as possible. We're trying to express things
22 clearly so that not only the Board can understand it. I'd
23 like it understandable to a member of the public and
24 certainly to a member of the public who is versed in
25 matters of the nuclear industry.

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1 Any further questions?

2 MS. YOUNG: And the Board wants us to continue
3 the practice of serving an electronic copy of --

4 CHAIRMAN BLOCH: That would be very helpful.
5 An electronic copy would be very helpful. This is crucial
6 to rapidly being able to review and compare.

7 If there are no further questions, we'll be in
8 adjournment.

9 (Whereupon, the foregoing matter went off the
10 record at 3:30 p.m. and resumed at 3:35 p.m.)

11 CHAIRMAN BLOCH: Back on the record. The
12 Board would state that it has in its possession a
13 microcassette called Tape 58 and a cassette, which is an
14 enhanced version of Tape 58. We have only one copy of
15 each of those. We wish to identify them with the record.
16 They shall be marked as Board Exhibit 12 and shall be in
17 evidence.

18 (Whereupon, the aforementioned items
19 were marked jointly for
20 identification as Board's Exhibit
21 Number 12 and were received in
22 evidence.)

23 CHAIRMAN BLOCH: We're in adjournment.

24 (Whereupon, the foregoing matter was concluded
25 at 3:35 p.m.)

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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: GEORGIA POWER CO. ET AL.

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
Neal R. Gross and Co., Inc.

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