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October 19, 1995

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO INTERVENOR MOTION
TO CONDUCT DISCOVERY RELATED TO DEW POINT INSTRUMENTS

INTRODUCTION

By Motion of October 6, 1995, Intervenor asked the Board to allow discovery of facts related to dew point instruments used by Georgia Power Company (GPC), arguing that the submission of a correction of testimony by Michael Duncan with regard to whether "as found" data was obtained on the Alnor VP-2466 and the failure of GPC to provide the information during discovery and during their direct case provides good cause for the discovery request. Intervenor's Motion to Conduct Discovery Related to Dew Point Instruments, dated October 6, 1995 (Motion), at 1-2. Among other things, Intervenor specifically (1) seeks to depose Mr. Duncan and other GPC and vendor employees, (2) time to review the fruits of any discovery granted in order to determine whether Intervenor needs to submit rebuttal evidence and (3) anticipates that Mr. Duncan will be called for cross-examination at some future (unscudled) hearing. *Id.* at 3-4. For the reasons set forth below, the Staff opposes the Motion.

DISCUSSION

The Motion should be denied. When the Affidavit of Michael Dwyer Duncan, dated September 19, 1995 (GPC Exhibit II-201 or Duncan Affidavit), was identified at hearing, the Board indicated that Intervenor consider the Staff's testimony concerning the Alnor VP-2466 before deciding whether more discovery was needed. Bloch, Tr. 14474. The testimony of the Staff on September 21, 1995, supports the GPC position reflected in GPC Exhibit II-201, that no vendor record exists showing any "as found" data was taken on the Alnor when it was received by the vendor. Skinner, Tr. 14642-14643. Consequently, the correction supplied by Mr. Duncan would appear to be appropriate.¹

In addition, Intervenor has not shown that the expansive discovery he seeks is likely to develop any further probative information or any admissible evidence on this matter or that information regarding instrument VP-1114 is responsive. GPC has responded to discovery on this matter and Intervenor does not show that those answers were incomplete or unresponsive. Thus, there appears to be no basis to delay this proceeding by holding the record open for the completion of discovery and cross-examination of Mr. Duncan on a matter adequately addressed by the current record. Accordingly, the Motion should be denied as Intervenor has not shown good cause for its request or that the information sought would justify delay of this proceeding. See *Illinois Power Co.* (Clinton Nuclear Station, Units 1 and 2), ALAB-340, 4 NRC 27,

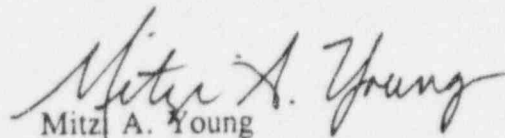
¹ Judge Bloch also observed that if the documentation attached to the Duncan Affidavit was valid, there would be nothing else that could be said on the issue. Tr. 14657. Intervenor does not show that the discovery sought is likely to dispell the validity of the information appended to the affidavit.

31-36 (1976) (discovery during the hearing can be denied by balancing delay of the proceeding against the timeliness of the request, the relationship of the information to unresolved questions in the proceeding and the overall importance of the information to a sound decision).

CONCLUSION

For the reasons stated above, the Motion should be denied as Intervenor has failed to show good cause to broaden and delay this proceeding by granting the relief sought.

Respectfully submitted,


Mitzel A. Young
Counsel for NRC Staff

Dated at Rockville, Maryland
this 19th day of October 1995

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTEVENOR MOTION TO CONDUCT DISCOVERY RELATED TO DEW POINT INSTRUMENTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system; or as indicated by double asterisk, by facsimile this 19th day of October 1995.

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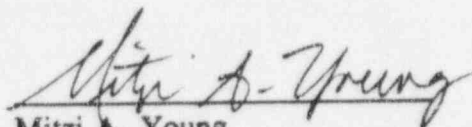
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