

17318

DOCKETED
USNRC

November 22, 1995

'95 NOV 24 A9:48

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before the Atomic Safety and Licensing Board

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

GEORGIA POWER COMPANY'S RESPONSE
TO INTERVENOR'S MOTION FOR CONTINUANCE

Georgia Power Company hereby responds to and opposes "Intervenor's Motion for Continuance for Good Cause" (Nov. 21, 1995). Filed the evening before Intervenor's proposed findings are due, Intervenor's motion seeks an extension of the already generous schedule on the grounds that Intervenor's counsel was busy elsewhere. This motion should be denied because it is prejudicial and does not provide good cause for the extension.

Intervenor seeks an eight day extension (from November 22 until November 30). While Intervenor characterizes this as a "small enlargement of time," it is in fact quite prejudicial to Georgia Power because it may extend the schedule for findings into the Christmas holiday.¹¹ Intervenor's argument that this is "the first enlargement of time requested by Intervenor for this post

¹¹ If the Staff and Georgia Power's findings were extended by eight days, Georgia Power's reply findings would be due on Saturday, December 23 -- the weekend before Christmas.

9512060086 951122
PDR ADOCK 05000424
G PDR

D503

hearing brief" does not justify imposing this hardship on Georgia Power counsel. That Intervenor's motion is the first with respect to his proposed findings is meaningless, and in fact the Board should consider Intervenor's history in this proceeding of ignoring deadlines and making last minute requests for extensions. In any event, with respect to the schedule for proposed findings, Intervenor requested and was granted a ten-day extension of the filing periods set out in the NRC regulations when the schedule was discussed with the Licensing Board. See Tr. 15476 (Sept. 28, 1995). The current schedule was fully discussed and established to accommodate the needs of all the parties, and it should not be disturbed at Intervenor's whim, particularly where as here the request for extension comes at the last moment. Georgia Power therefore asks that the Board enforce the established schedule.

None of the purported grounds for Intervenor's extension warrant disturbing the agreed-upon schedule. At the outset, Georgia Power observes that when Intervenor's counsel called Georgia Power's counsel (Mr. Joiner) on November 21 and requested consent to an extension, Intervenor's counsel stated that the extension was to allow Intervenor time to review and address in the findings an order that the Secretary of Labor has issued in the Mosbaugh case. Intervenor's counsel offered no other grounds for the extension. Georgia Power therefore believes that all of the other grounds now asserted in Intervenor's motion are post-hoc justifications and should be considered only with greatest skepticism.

With respect to the two unidentified proceedings in Houston and Louisville, Intervenor provides no specifics. He does not indicate when these hearings were scheduled or occurred, how long they lasted, or which of the number of attorneys from the Kohn, Kohn and Colapinto

law firm were involved. He also does not indicate if Intervenor's counsel was aware of these proceedings when the schedule in this case was established by the Licensing Board. Georgia Power believes that this hearing in Houston was one involving Houston Lighting and Power and understands, based on a communication with HL&P's attorney, that the hearing occurred in October and was scheduled well in advance -- before the findings schedule in this case was set. If Georgia Power's understanding and belief is correct, the hearing in Houston cannot possibly justify Intervenor's eleventh hour request.

Intervenor's reference to the need to file a brief relating to the enforcement conference concerning Mr. Hobby's Department of Labor proceeding is similarly unpersuasive. There was no rule or order that required Intervenor's counsel to file such a brief, no schedule by which such a document had to be submitted, and no urgency of which Georgia Power is aware. Intervenor's counsel simply chose his own priorities and elevated the enforcement matter over his obligation to work on findings in this proceeding. Further, this brief was submitted on November 2 -- nearly three weeks ago and before Georgia Power filed its proposed findings -- and simply cannot justify Intervenor's request to extend the schedule the day before his findings are due.

Nor does the representation of Mr. Whitehurst justify any extension. To the best of Georgia Power's knowledge, Mr. Whitehurst is represented by Mr. Stephen Kohn, and such representation would not have prevented Mr. Michael Kohn and his associate, Ms. Wilmouth, from preparing the findings. Again, Intervenor provides no details regarding how long the negotiations lasted and who were involved.

Last, the "need" to "study" the Commission's order on the Dixon notes and the DOL decision in the Mosbaugh case is an entirely specious argument. The Commission's decision can be read in five minutes and has no effect on Intervenor's findings. The order in Mr. Mosbaugh's DOL proceeding is also short and has little bearing on the issue currently being addressed in findings -- i.e., the accuracy of Georgia Power's statements related to diesel generators.

In sum, Intervenor's motion is unjustified and prejudicial. Moreover, Intervenor's last minute request puts the Board and the parties in an impossible position. For all of these reasons, Intervenor's motion for a continuance should be denied.

Respectfully submitted,



Ernest L. Blake, Jr.
David R. Lewis

SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

James E. Joiner
John Lamberski

TROUTMAN SANDERS
Suite 5200
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216
(404) 885-3360

Dated: November 22, 1995

DOCKETED
USNRC
November 22, 1995
'95 NOV 24 A9:48
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Georgia Power Company's Response to Intervenor's Motion for Continuance" were served upon the persons listed on the attached service list by deposit in the U.S. Mail, first class, postage prepaid, this 22nd day of November, 1995. The persons designated by an asterisk on the attached service list also received a copy by facsimile transmission.



David R. Lewis
Counsel for Georgia Power Company

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

SERVICE LIST

*Administrative Judge
Peter B. Bloch, Chairman
Atomic Safety and Licensing Board
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852

Administrative Judge
James H. Carpenter
Atomic Safety and Licensing Board
933 Green Point Drive
Oyster Point
Sunset Beach, N.C. 28468

Adjudicatory File
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stewart D. Ebnetter
Regional Administrator, Region II
U.S. Nuclear Regulatory Commission
101 Marietta Street, N.W., Suite 2900
Atlanta, Georgia 30303

*Administrative Judge
Thomas D. Murphy
Atomic Safety and Licensing Board
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852

Office of the Secretary
Att'n: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Michael D. Kohn, Esq.
Kohn, Kohn & Colapinto
517 Florida Avenue, N.W.
Washington, D.C. 20001

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

*Mitzi A. Young, Esq.
Charles Barth, Esq.
John T. Hull, Esq.
U.S. Nuclear Regulatory Commission
Office of the General Counsel
One White Flint North, Stop 15B18
11555 Rockville Pike
Rockville, MD 20852

Carolyn F. Evans, Esq.
U.S. Nuclear Regulatory Commission
101 Marietta Street, N.W., Suite 2900
Atlanta, Georgia 30323-0199

Director,
Environmental Protection Division
Department of Natural Resources
205 Butler Street, S.E., Suite 1252
Atlanta, Georgia 30334