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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

in the Matter of)	Docket Nos. 50-424-OLA-3
)	50-425-OLA-3
GEORGIA POWER COMPANY,)	
et al.)	F 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 REPLY TO
INTERVENOR'S AND THE NRC STAFF'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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December 22, 1995

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NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of

GEORGIA POWER COMPANY,
et al.

(Vogtle Electric Generating Plant,
Units 1 and 2)

Docket Nos. 50-424-OLA-3
50-425-OLA-3

Re: License Amendment
(Transfer to Southern Nuclear)

ASLBP No. 93-671-01-OLA-3

GEORGIA POWER COMPANY'S REPLY TO
INTERVENOR'S AND THE NRC STAFF'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Georgia Power Company ("Georgia Power") hereby submits its reply to "Intervenor's Final Statement of Fact and Conclusions of Law," which was filed by Allen L. Mosbaugh ("Intervenor") on November 30, 1995.¹ Georgia Power also replies herein to the NRC Staff's Proposed Findings of Fact and Conclusions of Law in the Form of an Initial Decision, which was filed on December 12, 1995).

Georgia Power submits that Intervenor's proposed findings lack support and merit and should be rejected. At the outset, Georgia Power urges the Board to exercise caution in accepting any of Intervenor's proposed findings. As reflected in the reply below, many of Intervenor's artfully worded findings misstate or distort the evidence, creating a web of misimpression; and in

¹ The numbered paragraphs (summary statements) in section IV of Intervenor's Final Statement of Fact and Conclusions of Law are hereinafter cited as Int. Summary, ¶ __. The numbered paragraphs (proposed findings) in sections V through X of Intervenor's Final Statement of Fact and Conclusions of Law are cited as Int. PF __.

many instances, Intervenor proposes findings that are entirely unsupported by any evidence in the record. In sum, none of Intervenor's proposed findings should be accepted at face value.

Beyond their frequent inaccuracy, Intervenor's proposed findings rely on tenuous inferences to impute evil motive and criminality to virtually every Georgia Power witness involved in this proceeding. This is hardly the sort of "balanced" findings solicited by the Licensing Board. Georgia Power submits that the weak and speculative inferences proposed by Intervenor are insufficient to support findings of wrongdoing. Such inferences do not amount to the substantial probative evidence that is required in order for Intervenor to meet his burden of going forward in this proceeding.

In order to assist the Licensing Board in its evaluation of Intervenor's proposed findings, this reply addresses Intervenor's proposed findings in essentially sequential order, providing cross-references to Georgia Power's proposed findings where appropriate.² In the sections discussing factual findings, Georgia Power also uses Intervenor's headings for the Board's convenience. The use of these headings should not be construed as any indication of agreement with the characterization or organization of these titles.

After addressing Intervenor's proposed findings, this reply also addresses a few NRC Staff findings³ which may have overlooked some aspect of the record. As a general matter, Georgia Power agrees with the NRC Staff's thoughtful and well-reasoned findings.

² Georgia Power Company's Proposed Findings of Fact and Conclusions of Law on Diesel Generator Reporting Issues (Nov. 6, 1995) are cited as GPC PF __.

³ The NRC Staff's proposed findings are cited as NRC PF __.

I. Intervenor's Discussion of Phase I Issues

Intervenor's discussion of the Phase I issues, at pages 2-4 and 22-25 of its submittal, is inappropriate and should be disregarded. The Board deferred its decision on the Phase I issues to permit consideration of any common questions of witness credibility, but Intervenor has identified no such questions. The Board also asked the parties to identify whether any portion of the record on the diesel generator issues sheds light on the Phase I issue (alleged illegal license transfer). Tr. 15551-52. Intervenor does not identify any such portions of the Phase II record. Instead, Intervenor attempts, in what amounts to a six-month later reply for Phase I, to introduce in its proposed findings some extra legal argument on Georgia Power's burden and the Safety Light case. Such argument belonged in Intervenor's Phase I findings and is untimely.

II. Intervenor's Discussion of Phase II Procedural History

Intervenor's discussion of the Phase II Procedural History, at pages 4-9 of Intervenor's Final Statement of Fact and Conclusions of Law, is derived from the similar discussion in Georgia Power's proposed findings. Intervenor, however, has deleted any mention of the bases for his original contentions. Because the bases that were originally pleaded by Intervenor are very important in defining and understanding the scope of Intervenor's contention, the more complete discussion in Georgia Power's proposed findings should be adopted.

III. Intervenor's Discussion of the Evidentiary Standards

A. Burden of Going Forward and Burden of Proof

Georgia Power agrees that it bears the ultimate burden of proof in this proceeding, once Intervenor has met his "burden of going forward." Georgia Power also agrees with Intervenor

that his burden of going forward is "the burden of presenting a prima facie case regarding the admitted contention." See Intervenor's Final Statement of Fact and Conclusions of Law at 9.

Georgia Power does not agree with Intervenor's application of these principles, which appears to reduce Intervenor's burden to a trivial and meaningless level. For example, in his proposed findings, Intervenor states that he "presented the position" that the Cash lists were slides pulled from the presentation and asks the Board to find that Georgia Power has not presented sufficient evidence to rebut the assertion. Int. PF 89. Thus, it appears that Intervenor equates his burden with the obligation of "present[ing] a position," which Georgia Power must then rebut. This example is telling, because Intervenor's position is nothing more than a tenuous inference he draws from circumstantial evidence; and without any real proof that his inference is reasonable or likely, Intervenor then asks the Board to shift the burden to Georgia Power to prove a negative.

Intervenor's approach misapplies his evidentiary burden. In order to present a prima facie case, Intervenor must "produc[e] enough evidence to permit the trier of fact to infer the fact at issue."⁴ Whether Intervenor has established a prima facie case must be determined in the context of the standard of proof.⁵ Since the "preponderance of the evidence" standard normally applies, Intervenor should be required to adduce sufficient evidence to establish that his positions are more likely correct than not. This is particularly appropriate where Intervenor's positions are nothing more than inferences based on circumstantial evidence.

⁴ Texas Department of Community Affairs v. Burdine, 101 S. Ct. 1089, 1094 n.7 (1981).

⁵ See Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2513 (1986) ("The question . . . is whether a jury could reasonably find either that the plaintiff proved his case by the quality and quantity of evidence required by the governing law or that he did not. . . . It makes no sense to say that a jury could reasonably find for either party without some benchmark as to what standards govern its deliberations and within what boundaries its ultimate decision must fall, and these standards and boundaries are in fact provided by the applicable evidentiary standards.").

A number of factors militate toward strict enforcement of Intervenor's evidentiary burden of going forward in this proceeding: (1) the serious potential for reputational harm that may result from Intervenor's allegations, (2) substantial time delay between the hearing and the facts allegedly giving rise to the contention, (3) the nature of the evidence presented by Intervenor, and (4) the severity of the sanction that would be visited upon Southern Nuclear were Intervenor successful.

The first two factors were considered by the Licensing Board in Inquiry into Three Mile Island Unit 2 Leak Rate Data Falsification.⁶ There, the Licensing Board decided to apply a stricter evidentiary standard to the its inquiry into allegations regarding leak rate surveillance improprieties at TMI-2 during 1978-79, based on two justifications:

First, a finding in this proceeding that, for example, a particular individual has falsified leak rate tests at least implies dishonesty or fraud and could result in severe reputational injury. Arguably, more than a bare preponderance of evidence should underlie such a finding. . . .

. . . Second, this Board's inquiry came very late in the day. The events in question occurred in 1978-79 and the witnesses were finally asked to testify about those events before this Board in the Fall of 1986, seven to eight years later. . . . In a case like this, where an issue depends on strained and faded memories, it would be unfair to find a person guilty of dishonest or fraudulent conduct on a mere preponderance of the evidence, which can mean only that the record underlying a finding makes it slightly more likely than not.⁷

⁶ LBP-87-15, 25 N.R.C. 671, 690 (1987), aff'd on other grounds, CLI-88-2, 27 N.R.C. 335 (1988).

⁷ Id. at 690.

In this hearing, both of the factors that led the Licensing Board in Inquiry into TMI-2 to apply a strict evidentiary standard are present. Serious potential for reputational harm exists here because Intervenor's contention alleges that Southern Nuclear does not possess the requisite character to become a licensee. In attempting to substantiate its contention, Intervenor has sought to introduce evidence to show that Georgia Power's management generally and a number of individuals specifically behaved in an unprincipled, fraudulent manner. This is precisely the type of reputational injury that justified the application of a stricter standard in Inquiry into TMI-2. In addition, most of the events which Intervenor alleges in support of this argument transpired over five years ago; thus, it is likely that any witness recollections would suffer from "strained and faded memories." Accordingly, while Georgia Power does not advocate applying a clear and convincing evidence standard in this proceeding, we do urge the Board to require Intervenor's strict adherence to his evidentiary burden, particularly where Intervenor relies on inferences drawn from the inability of individuals to recall events with great specificity.

The additional factors requiring strict enforcement of Intervenor's evidentiary burden stem from Collins Securities Corporation v. Securities and Exchange Commission.⁸ There, the D.C. Circuit noted that, in securities fraud cases, there is often the need to rely upon inferential, rather than direct, evidence to prove wrongdoing. The court expressed concern about the inherently weaker nature of this type of evidence, and the high stakes that are at issue in such cases:

[T]he use of inferences, which is dependent on the exercise of discretion by an administrative agency and not a court, can, as in this case, lead to drastic sanctions which in effect amount to a deprivation of livelihood for the sanctioned parties.

⁸ 562 F.2d 820, 826 (D.C. Cir. 1977).

The fact that such consequences can flow from an inferential mode of reasoning exercised by an administrative agency forms in large part our concern over the standard of proof to which these inferences are to be put.⁹²

The D.C. Circuit concluded that, given "the type of case (fraud) . . . the heavy sanction (deprivation of livelihood) . . . [and] the type of circumstantial proof on which the SEC most often must rely, it appears to us that the 'clear and convincing evidence' standard is the proper standard here"¹⁰²

Again, while Georgia Power does not seek application of the clear and convincing evidence standard, it notes that both of these additional factors apply to this proceeding. Intervenor relies heavily on inferences drawn from circumstantial evidence, and in fact the denial of the requested license transfer would operate very much as a sanction. Accordingly, where Intervenor's position is based on inference, and in particular, where those inferences are based on the frailty of

⁹² Id. at 823.

¹⁰² Id. at 824. Subsequently, the D.C. Circuit, relying on Collins, applied the "clear and convincing" standard in a situation involving the FCC's revocation of a broadcast license. In Sea Island Broadcasting Corp. of South Carolina v. Federal Communications Commission, 627 F.2d 240 (D.C. Cir. 1980), cert. denied, 101 S. Ct. 105 (1980), the FCC argued that the preponderance standard should govern. Rejecting this position, the court invoked Collins, noting the similarity of the circumstances presented by both cases:

While the Commission has some persuasive points, it has not satisfied us that the difference in consequence is notable in terms of distinguishing an SEC revocation from an FCC revocation. The broadcaster who loses his license may get other jobs in the industry, but he certainly has lost a business. The holder of multiple licenses [sic] may continue to hold one although another is revoked, but the fact of revocation of one license would not be ignored in case of a challenge to other licenses.

Id. at 243. Critical to the court's reasoning was the prospect of loss of livelihood implicit in revocation of a license. Indeed, the court distinguished between a broadcaster's loss of a license and the loss of a license by a HAM or CB radio operator, which, according to the court, would not give rise to a "clear and convincing" standard of proof. Id. at 244.

memory, the Board insist that Intervenor establish in the first instance the reasonableness and likelihood of such inferences.

B. Willfulness Standard

In a section apparently mis-titled "Materiality," at pages 11-14 of its submittal, Intervenor discusses the standards for assessing the willfulness of a violation. With the exception of paragraph 12 of Intervenor's discussion (at pp. 13-14), Georgia Power generally agrees with Intervenor's discussion, but observes that Intervenor provides relatively little discussion of the factors that negate willfulness.

In paragraph 12 of Intervenor's discussion, Intervenor suggests that willfulness does not require bad purpose or the absence of any justifiable excuse, but rather denotes intentional, knowing and voluntary acts. The meager citation to a bankruptcy case is not persuasive authority and should not override the NRC's definition stated in its Enforcement Policy. 10 C.F.R. Part 2, App. C, at ¶ IV.C. That policy statement indicates that a violation is willful when an individual acts either with deliberate intent to violate or falsify or with careless disregard of requirements. Contrary to Intervenor's suggestion in paragraph 12, the fact that an act is "voluntary" is not sufficient to support a willfulness finding. Conversely, a "justifiable excuse" may well negate willfulness.

With regard to factors belying willfulness, there are several informative NRC decisions. In Wrangler Laboratories, Larsen Laboratories, et al., LBP-89-39, 30 N.R.C. 746 (1989), a Licensing Board ruled that a licensee's failures were not evidence of careless disregard of NRC regulations or willful intent to violate NRC regulations where the licensee made "serious albeit defective" efforts to comply with NRC regulations. Id. at 780. The Licensing Board also

concluded that, even though the licensee's actions were based on "multiple incorrect assessments and misapprehension of his regulatory obligations," the fact that reasons credible to the licensee existed for actions was sufficient to defeat a conclusion of willfulness. Id. Thus, a violation is not willful where a licensee expends effort to comply with requirements and believes that it is acting appropriately.

Other NRC decisions have also determined that violations were not willful where the perpetrator's actions were based on his belief that he was acting appropriately. See Kenneth G. Pierce, LPB-95-4, 41 N.R.C. 203, 224-25 (1995); Fewell Geotechnical Engineering, Ltd., LBP-91-29, 33 N.R.C. 561, 579-80 (1991); Reich Geo-Physical, ALJ-85-1, 22 N.R.C. 941, 949 (1985).

C. Character and Competence

Georgia Power generally agrees with Intervenor's discussion of the case law on character and competence, addressed at pages 14-17 of Intervenor's submittal. Intervenor, however, makes no mention of the importance that was attached in the South Texas case to whether false statements were made intentionally or knowingly. There, the Board held that, in the absence of intent to submit false statements or knowledge of their falsity, inaccurate statements do not reflect adversely on the licensee's character. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LBP-84-13, 19 N.R.C. 659, 683 (1984), aff'd, ALAB-799, 21 N.R.C. 360 (1985).

Similarly, Intervenor does not discuss the distinction recognized in the South Texas proceeding between "individual" and "organizational" competence or character. The Board concluded that the failure of one or more individuals to demonstrate adequate competence or

character does not per se indicate a lack of organizational competence or character, and vice versa. LBP-84-13, 19 N.R.C. at 678. In evaluating the competence and character of an organization, the Licensing Board sought to evaluate and balance the following factors: "the role of particular individuals in the organization, the responsibilities which they exercise, the seriousness and frequency of any deficiencies attributable to them, and the steps taken by the organization when deficiencies are discovered." LBP-84-13, 19 N.R.C. at 678-79. Therefore, a performance failure of one or more individuals does not necessarily require a finding of a lack of organizational character.

D. OI Findings

Intervenor appears to argue that the Licensing Board should accept the conclusions of the OI report rather than the conclusions of the NRC Staff Coordinating Group because the NRC Staff was somehow constrained by a higher evidentiary standard. The Coordinating Group report did not address or depend on any allocation of the burden of proof. Rather, the Coordinating Group reviewed the evidence and determined that it did not support a single one of OI's conclusions. See generally Staff Exh. II-45. See also GPC PF 41.

Intervenor asserts that there was unanimous agreement within OI with the conclusions of the Vogtle OI Report. Int. PF 23. This overstates Mr. Hayes' testimony. He said that he was not aware of any disputes concerning the conclusions reached in the OI report. Tr. 11645 (Hayes).

Intervenor proposes that the Board incorporate by reference OI's conclusory paragraphs listed in Intervenor's August 11, 1995 Motion to Admit Certain Responses to Intervenor's First Request for Admissions to Georgia Power Company. It is not clear to which OI conclusions

Intervenor is referring. In its August 11 motion, Intervenor sought to introduce into evidence more than one hundred "admissions" and "denials" by Georgia Power from Int. Exh. II-168, Georgia Power's "Response to Intervenor's First Request for Admissions" (July 7, 1994), including the corresponding conclusion in the OI report for each admission and the supporting reference for each conclusion.

Further, Intervenor's proposal amounts to an untimely motion for reconsideration or to supplement the record. After considerable argument on the admissibility of OI findings denied by Georgia Power,¹¹¹ the Board ruled that Georgia Power's denials of OI conclusions from Int. Exh. II-168 would not be admitted into evidence, but that Intervenor could refer to Georgia Power's denials in its proposed findings. Memorandum and Order (Intervenor Motions; Effect of Hobby Decision), Oct. 23, 1995 at 10-11. Intervenor's current proposal is no more than a transparent attempt to renew its previous motions that were denied, and to enlarge the record long after the record has closed in this case. Accordingly, Intervenor's request should be rejected.

Intervenor's proposal is also inappropriate in light of the Coordinating Group's rejection of every one of OI's conclusions. In addition, incorporating the OI conclusions is unnecessary. All parties to this proceeding have submitted findings based on a massive record. The Board can resolve the issues on the basis of the evidence and proposed findings, including the testimony of witnesses whose credibility the Board has assessed. The OI conclusions would not contribute

¹¹¹ Intervenor's Motion to Admit Certain Admissions and Sections of the OI Report Into Evidence, Aug. 11, 1995; Georgia Power Company's Response to Intervenor's Motion to Admit Certain Admissions and Sections of the OI Report Into Evidence, Aug. 22, 1995; Intervenor's Motion to Admit Certain Admissions of Georgia Power, Oct. 6, 1995; Georgia Power Company's Response to Intervenor's Motion to Admit Certain Admissions of Georgia Power, Oct. 12, 1995.

anything to this record, other than perhaps the investigators' dubious opinions on the ultimate issues, but those ultimate conclusions are for the Board to make.

The lack of value of investigative conclusions is illustrated by the Appeal Board's decision in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-722, 19 N.R.C. 1193, 1260-61 (1984). There, the Licensing Board had declined to admit without a sponsor an investigative report where the pertinent facts had already been introduced into evidence and the unsponsored investigative report differed only in the conclusions drawn from those facts. The Licensing Board reasoned that, because it was responsible for reaching the conclusions, the conclusions of others would be of no particular value. The Appeal Board agreed, noting that once the Licensing Board is apprised of the facts, it is able and obliged to form its own conclusions.

E. Collateral Estoppel

Intervenor argues that the most recent decisions in the Hobby^{12/} and Mosbaugh^{13/} Department of Labor proceedings constitute collateral estoppel on issues in this proceeding. Georgia Power disagrees, for the following reasons.

Giving preclusive effect to these two decisions -- the Secretary of Labor's November 20, 1995 Decision and Remand Order in the Mosbaugh case and the Secretary's August 4, 1995 Decision and Remand Order in the Hobby case -- would not serve the purposes of the collateral estoppel doctrine. The purposes underlying collateral estoppel are "protecting litigants from the burden of relitigating an identical issue with the same party or his privy and . . . promoting judicial

^{12/} Decision and Remand Order, DOL Case Nos. 90-ERA-30 (August 4, 1995).

^{13/} Decision and Remand Order, DOL Case Nos. 91-ERA-1 and 91-ERA-11 (November 20, 1995).

economy by preventing needless litigation."¹⁴ The Secretary's Decision in the Hobby case was issued long after the close of the record on illegal license transfer allegations (the subject matter of Mr. Hobby's substantive allegations). Similarly, the Secretary's Decision regarding Mr. Mosbaugh was issued after the close of evidence on the diesel generator issues in this hearing that Mr. Mosbaugh raised. Thus, in both cases, the Board has already heard, first-hand, all the evidence necessary to determine whether Intervenor's contention has any merit and whether the license amendment should be granted. Were the Board to give collateral estoppel effect to the Secretary's determinations, it would in effect be abandoning years of protracted litigation, months of on-the-record adjudicatory meetings and the resultant far more complete record.

A similar analysis has been used by federal courts in finding that resort to collateral estoppel has been waived.¹⁵ Although waiver is not an issue in this proceeding given the timing of the Secretary's Decision, the same operative principle that applies in the waiver context is present here: for a determination in a prior proceeding to have collateral estoppel effect, the estoppel must be invoked prior to the presentation of evidence on the matter sought to be estopped in the second proceeding.¹⁶ This conclusion is further bolstered by the much greater quantity and probative value of the evidence in this proceeding as compared to that presented before the Department of Labor.

¹⁴ Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 331 (1979), quoted in Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 N.R.C. 175, 199 (1981).

¹⁵ See, e.g., Belmont Realty Corp. v. Bogosian, 11 F.3d 1092, 1098 n.1 (1st Cir. 1993) (allowing second action to proceed to judgment without raising res judicata waives right to raise it thereafter).

¹⁶ See also Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), LBP-81-58, 14 NRC 1167, 1191 (1981) (federal district court's summary judgment decision not entitled to collateral estoppel effect when, *inter alia*, the decision was issued after the hearing board had begun studying the record and had formed independent factual conclusions).

Applying preclusive effect to either the Mosbaugh or the Hobby Department of Labor decisions is also inappropriate because the standards are not met. As a general matter, in order for collateral estoppel to be applied, the following elements must be present:

[T]he individual or entity against whom the estoppel is asserted must have been a party, or in privity with a party, to the earlier litigation. The issue to be precluded also must be the same as that involved in the prior proceeding and the issue must have been actually raised, litigated and adjudged. Additionally, the issue must have been material and relevant to the disposition of the first action, so that its resolution was necessary to the outcome of the earlier proceeding.^{17/}

Two of the above three factors are not present here.

First, the issue adjudged in the Secretary of Labor's Decision on Mr. Hobby was whether his job had been eliminated because he purportedly had engaged in protected activity. Secretary of Labor's Decision and Remand Order, DOL Case No. 90-ERA-30 at 5-6. This issue has never been a part of this proceeding. Nor were the merits of Mr. Hobby's original concerns necessary to, or adjudged, in the Secretary's Order.

The Secretary's decision regarding Mr. Mosbaugh is similarly immaterial to the diesel generator reporting issues before the Licensing Board.^{18/} The specific issue decided by the Secretary was that Georgia Power should not have discharged Mr. Mosbaugh, in October 1990,

^{17/} Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), ALAB-837, 23 NRC 525, 536-37 (1986).

^{18/} Mr. Mosbaugh too decided not to raise allegations of discrimination as a basis for his contention in this proceeding.

because of his taping."^{19/} Whether Georgia Power made a correct judgment in October 1990 regarding Mr. Mosbaugh's taping is immaterial to the issue being considered by the Licensing Board -- whether Georgia Power knowingly submitted inaccurate statements to the NRC concerning diesel generators earlier that year. Although some of the background facts in the Labor proceeding overlap with facts Intervenor has alleged to support his contention, those facts were clearly not necessary to the outcome of the Secretary's decision. Moreover, the legal and ultimate issues sought to be resolved by each proceeding are very distinct, and thus the results of these separate inquiries cannot be substituted one for the other. In particular, the merits of the substantive allegations that Mr. Mosbaugh submitted to the NRC was, and subsequently raised in this proceeding, were neither necessary to, nor adjudged, in the Secretary's decision.

Second, neither of the Secretary's decisions are final. The Secretary decision's are not yet final agency action; until completion of the remanded proceeding, it is not a final order and not yet subject to judicial review. Carolina Power & Light Co. v. U.S. Dep't of Labor, 43 F.3d 912, 915 (4th Cir. 1995); Sun Shipbuilding & Dry Dock Co. v. Benefits Review Board, 535 F.2d. 758, 760 (3d Cir. 1976); Washington Metropolitan Area Transit Auth. v. Office of Workers' Compensation Programs, 824 F.2d. 94, 95-6 (D.C. Cir. 1987). See generally Liberty Mutual Ins. Co. v. Wetzel, 424 U.S. 737, 744 (1976) (judgments have never been considered final where assessments of damages or awarding of other relief remains to be resolved). Further, Georgia Power has moved to reopen the record of the decision in the Mosbaugh proceeding. Respondent Georgia Power Company's Motion to Reopen the Record and for Further Hearings, DOL Case No. 91-ERA-1

^{19/} Secretary of Labor's Decision and Remand Order, Case Nos. 91-ERA-1 and 91-ERA-11, at 12-15 (November 20, 1995).

and 91-ERA-11 (Dec. 13, 1995). At the time this Licensing Board proceeding began, there were in the Hobby and Mosbaugh DOL proceedings ALJ decisions favorable to GPC. Those decisions were appealed by Mosbaugh. The latest decisions by the Secretary are both favorable to Mr. Mosbaugh and will be challenged by GPC. This is only an interim step in a larger proceeding.

IV. Intervenor's Summary of Phase II Issues and Findings (Int. Summary ¶ 32)

Intervenor asserts that the issues pertaining to the diesel generators are multi-faceted and include whether Georgia Power and Southern Nuclear "performed an inadequate root cause investigation into the failure of the diesel generators." Int. Summary, ¶ 32. The adequacy of Georgia Power's root cause investigation is not an issue in this proceeding. The gravamen of Intervenor's contention is that Georgia Power management knowingly conspired to submit material false statements in certain communications. The Licensing Board specifically rejected Intervenor's attempt to introduce, as a purely technical issue, the root cause of the diesel generator failures, and similarly ruled that root cause is not an issue in this proceeding except to the extent it relates to whether Georgia Power knowingly provided inaccurate information to the NRC in 1990. Memorandum and Order (Motion to Strike Mosbaugh Testimony) (May 11, 1995) at 21-22; Tr. 14242-43, 14309.

Similarly, Intervenor asserts that the focus of the issues include whether Georgia Power and Southern Nuclear failed to follow procedures. Int. Summary ¶ 32. Again, procedural non-compliance was not pleaded as a basis for Intervenor's contention and is at issue in this proceeding only to the extent that it bears on the alleged willfulness of misstatements.

A. "[Alleged] Evidence of Willfulness (Including Careless Disregard) Among the Key Persons Involved in Phase II."

i. "[Intervenor's Discussion of] Mr. Cash" (Int. Summary ¶¶ 33-49)

Intervenor asserts, without any citation, that "[a]ccording to Georgia Power, the problems with the counts originally started with Jimmy Paul Cash." Int. Summary ¶ 33. Georgia Power is not aware of any proposed finding or any testimony where it made such a statement. Intervenor then proceeds to fault Georgia Power for its "willingness . . . to so readily blame Mr. Cash for the problems with the list. . . ." Int. Summary ¶ 35. The implication of Intervenor's statement -- that Georgia Power singles out Mr. Cash for blame -- is wrong. Georgia Power has recognized and acknowledged that the inadequate communications between Mr. Bockhold and Mr. Cash contributed to the error, and counseled Mr. Bockhold on his performance. See GPC PF 123-25, 657.

Georgia Power did counsel Mr. Cash as well, but that counseling as described by Mr. Cash also related to the adequacy of the communications and understanding between Mr. Cash and Mr. Bockhold. Tr. 4479 (Cash). Since, after strongly lambasting Georgia Power for criticizing Mr. Cash, Intervenor himself asserts that Mr. Cash failed to take adequate steps to insure correct information was given to the NRC (Int. Summary ¶ 36), Intervenor's attack on Georgia Power for its counseling of Mr. Cash makes no sense. Moreover, it should not be overlooked that on June 29, 1990, when the cover letter transmitting the revised LER was being reviewed, Mr. Mosbaugh asserted repeatedly that the reason erroneous information was provided in the April 9 letter was that the persons who performed the count made mistakes. GPC Exh. II-44 at 3, 4, 5, 16, 23, 24, 28. Intervenor's written allegations also asserted that Mr. Cash's mistakes should have been identified as a cause. GPC II-73A at 4; GPC II-73C at 4.

Intervenor proceeds to argue that Mr. Cash was not the cause of the false statements in either the April 9 letter or subsequent statement. Int. Summary ¶¶ 34, 37. Rather, Intervenor states that the question is "who decided not to present the Cash count slide to the NRC on April 9. . . ." Int. Summary ¶ 38. There is no evidence that the typed Cash list was a slide, as discussed in GPC PF 100-106.

Intervenor also states that the question is "who subsequently failed to disclose the existence of the Cash list when needed and who failed to make inquiries into either that list or the basis of the Cash count." Int. Summary ¶ 38. This question is ironic because Mr. Mosbaugh was advised by Mr. Kochery on April 11 that Mr. Cash had start data related to the April 9 presentation but made no effort to obtain this data or disclose it to other individuals. GPC PF 129-130. Mr. Mosbaugh spoke to Mr. Cash on April 19 but again failed to ask Mr. Cash for the data. GPC PF 187. Mr. Bockhold later instructed Mr. Mosbaugh to work with Mr. Cash to reach agreement on the list of starts (GPC PF 260), but even then there is again no evidence that Mr. Mosbaugh asked Mr. Cash for his data. Thus, Mr. Mosbaugh bears as much fault as anyone in failing to inquire into and disclose the existence of the Cash list, even though his findings reference none of these facts.

Mr. Mosbaugh asserts that even without the Cash list, Messrs. Bockhold, McCoy and Hairston had such "extensive knowledge" that they knew or should have known that the information contained in the April 9 presentation was misleading. Int. Summary ¶ 39. This assertion is addressed in GPC PF 108-115.

Intervenor next asserts that Mr. Cash's handwritten list was detailed enough to allow a knowledgeable reader to form an independent judgment on the starts. Int. Summary ¶ 40. Since that list no longer exists and may have been considerably different from the typed list (Ms. Dixon testified that Mr. Cash made numerous corrections and changes during the typing of the list -- see GPC PF 93), there is no basis for this assertion. Intervenor then asserts that Mr. Cash gave a copy of this list to Mr. Bockhold, Ms. Dixon and Mr. Burr, and that all three of these individuals would have provided a copy of this list to "Corporate" during the normal course of business. Again, these assertions are not well founded. The weight of the evidence (particularly Mr. Cash's April 19, 1990 statement to Mr. Aufdenkampe that he just gave Mr. Bockhold totals) indicates that Mr. Cash did not give his list to Mr. Bockhold. GPC PF 63. Further, there is no support for the assertion that Ms. Dixon or Mr. Burr would have provided the list to anybody in "Corporate." It is not reasonable to expect that Ms. Dixon, a secretary, would have been taken it upon herself to send the list to the corporate office. And Mr. Burr does not recall ever seeing the list. GPC PF 107.

Intervenor proceeds to criticize Mr. Cash for failing to inform Mr. Mosbaugh that Messrs. Burr and Bockhold had "actual lists that could be reviewed" or that Ms. Dixon had typed a list. Int. Summary ¶ 42. This assertion presupposes that both Mr. Bockhold and Mr. Burr had lists -- a supposition that is questionable with respect to Mr. Burr and contrary to the weight of the evidence with respect to Mr. Bockhold. Further, while Mr. Cash did not mention the list that Ms. Dixon had typed, Mr. Mosbaugh failed to ask Mr. Cash whether he had a list even though he had been previously told by Mr. Kochery that Mr. Cash had the data. See GPC PF 129, 187.

Intervenor suggests that during the April 19 conference call, Mr. McCoy and Mr. Bockhold ignored Mr. Aufdenkampe's "offer" to verify the count number because they "both knew of the actual Cash list and knew that what had been presented to the NRC was, at best, grossly misleading." Int. Summary ¶ 44. This suggestion is contrived and mischaracterizes recorded statements. During the April 19 conference call, Mr. Aufdenkampe did not "offer" to perform a verification, but rather announced that such a verification effort was being performed. Further, there was no suggestion by either Mr. McCoy or Mr. Bockhold that the site verification effort should be discontinued. In fact, the verification efforts at the site did continue and the result was later discussed with Mr. Shipman and Mr. Stringfellow. GPC PF 174-85.

Intervenor also remarks that "[d]uring this call, it is evident that McCoy and Bockhold are attempting to word engineer the LER to gloss over . . . false statements." Int. Summary ¶ 44. Intervenor's statement is unsupported. See GPC PF 206-08. Intervenor likewise states that on April 19, Mr. McCoy and Mr. Bockhold "were informed by their appropriate management (Aufdenkampe and Mosbaugh), that they had filed material false statements with the NRC." Int. Summary ¶ 44. There is not one wit of evidence that Mr. Mosbaugh or Mr. Aufdenkampe ever made such a statement to Mr. McCoy or Mr. Bockhold. With respect to the concerns that may have been relayed indirectly to Mr. McCoy, see GPC PF 202-03.

Intervenor states that "after April 9, all copies of the Cash list disappeared from the site and from corporate." Int. Summary ¶ 45. This statement is untrue. The typed Cash list remained on disk at the Vogtle site and was later provided by Georgia Power to the NRC (Int. Exh. II-132 at 13-15; Int. Exh. II-39 at 26 (¶ 63 admitted per Tr. 13154)), and there is no evidence that

anybody in the corporate office ever received a copy of this list. It is possible that Mr. Cash gave Mr. Burr the handwritten list, but Mr. Burr does not recall ever seeing it. See GPC PF 107.

Intervenor faults Mr. Cash for his "failure" to properly identify that his list "had been formally typed as part of the preparation for the oral presentation." Int. Summary ¶ 47. If this subtly crafted statement is intended to suggest that the Cash list was a backup slide for the presentation, it is unsupported. See GPC PF 100-06.

Intervenor theorizes that once the Cash list was uncovered, Georgia Power's story began to unravel and Mr. Cash "recalled the actual numbers of starts he would have orally provided to [Mr.] Bockhold prior to the April 9th presentation." Intervenor adds that these numbers do not match those provided to the NRC. Int. Summary ¶ 48. These statements are inaccurate. Mr. Cash cannot recall what numbers he provided. GPC PF 62 and n.9. While he speculates that it is possible that he provided numbers higher than 18 and 19, such speculation is prompted only by the typed list and not by any recollection. See GPC PF 95-96. Further, while Mr. Cash is no longer able to remember what numbers he provided, his more contemporaneous statements are strong evidence that he provided the numbers used during the April 9 presentation. See GPC PF 96 (particularly Mr. Cash's statements to Mr. Mosbaugh and Aufdenkampe on April 19, 1990 -- only 10 days after the April 9 presentation and before these events became the subject of allegations and investigations -- that he came up with the 18 and 19 numbers).

Finally, Intervenor argues that the definition that Mr. Cash was using to count starts allowed failures to be classified as successful and was therefore misleading. Intervenor attributes this to the "working definition" provided by Mr. Bockhold. Int. Summary ¶ 49. Mr. Bockhold,

however, would not have considered starts to be successful if they experienced problems or failures similar to the failures that occurred during the SAE. Tr. 3808-09, 3846-48, 3850-53, 3879 (Bockhold). Thus, it appears that Mr. Bockhold and Mr. Cash were not working with a common definition or common understanding of the start count. Tr. 3832, 3853, 3888 (Bockhold). See also GPC PF 58-59, 66. In sum, it is evident that Mr. Bockhold and Mr. Cash were not communicating adequately, but there is no evidence of any intent to be deceitful. See GPC PF 123-25.

ii. "[Intervenor's Discussion of] Allen Mosbaugh" (Int. Summary ¶¶ 50-59)

Intervenor states that "Georgia Power has attempted to shift much of the blame for its serious misconduct." Int. Summary ¶ 50. That is an overstatement. Mr. Mosbaugh was, in 1990, part of Georgia Power, and his failings are the Company's as well. Georgia Power holds Mr. Mosbaugh partially responsible for the inaccuracy of the LER, for the reasons discussed in GPC PF 227-250, and for his failure to contribute to the accuracy of the OSI white papers. GPC PF 412. His role as a whistleblower cannot act to excuse him.

Intervenor states that Mr. Mosbaugh's conduct was exemplary and that, on April 19, when he first saw the COAR letter, he properly and correctly identified that materially false information might exist in the COAR letter and warned that the LER may contain false statements. Georgia Power does not disagree that Mr. Mosbaugh properly raised concerns on April 19 (though he was only one of several individuals who called for verification of the start count statement -- see GPC PF 137, 140-43, 228). Mr. Mosbaugh, however, did not adequately verify the LER statement. Nor did he bring to the attention of the corporate office the results of Mr. Webb's review and the discussions with Mr. Cash. See GPC PF 227-50.

Intervenor states that after April 19, he followed up his concerns, working at home on his own time to put together a list of starts and, upon completion of the list, promptly informed the Plant Manager of his findings. Int. Summary ¶ 52. The timing of this effort and Mr. Mosbaugh's failure to disclose the Webb list in fact suggest that Mr. Mosbaugh undertook this effort in large measure to conceal his own performance failure. There are a number of indications that this is so. First, Mr. Webb informed Mr. Mosbaugh on April 20 that the LER that had been issued appeared incorrect. GPC PF 258. Despite having received this information from his subordinate, Mr. Mosbaugh did not immediately relay it to Mr. Bockhold or provide Mr. Bockhold with Mr. Webb's list, but instead embarked on an effort which ten days later resulted in "his own list." Mr. Mosbaugh's delay is inconsistent with Mr. Mosbaugh's position in this proceeding that an inaccurate statement should be reported and corrected immediately. This effort to create a new list was also unnecessary, because Mr. Webb had already created a list and Mr. Mosbaugh was able to check it and mark it up as necessary (indicating for example where in the sequence of starts the UV test occurs). GPC Exh. II-71; Tr. 5230 (Mosbaugh). The most likely explanation for this behavior is that Mr. Mosbaugh did not wish to inform Mr. Bockhold that he had received a list of starts from Mr. Webb on April 19 and had failed to alert management to its implications. The creation of a new list allowed Mr. Mosbaugh to inform Mr. Bockhold of the error in the LER without mentioning Mr. Webb and created the impression that it was Mr. Mosbaugh alone who had uncovered the error. Moreover, when Mr. Mosbaugh met with Mr. Bockhold on May 2, he again made no mention of the Webb list or any discussion with Mr. Cash. GPC II-109. When combined with Mr. Mosbaugh's subsequent concealment of the Webb list (see GPC PF 234-50) and his overstated

denials of responsibility (see GPC PF 241-42), these facts imply a degree of guilt and concealment that is diametrically opposed to Intervenor's characterization of his performance as exemplary.

Intervenor asserts that after he was removed from the PRB, Mr. Mosbaugh "continued to press for a resolution of the COAR/LER issues." Int. Summary ¶ 53. No citation or support is offered. Intervenor asserts that he "powerfully and correctly attempted to insure that Georgia Power did not submit additional false statements to the NRC on June 29." Id. On June 29, 1990, however, Mr. Mosbaugh wanted the June 29th letter to state that error had been made by the person performing the count. GPC Exh. II-44 at 16, 18. His comments would not have addressed the adequacy of the communications between Mr. Bockhold and Mr. Cash.

Intervenor also states that he volunteered thousands of hours of time in order to assist the NRC with review of his allegations. Int. Summary ¶ 53. This statement is not supported by the record. Compare Tr. 9990 (Mosbaugh). Intervenor further states that "the branch of the NRC with primary responsibility for reviewing his concerns (which also extensively and informally worked with him for hundreds of hours) found Mr. Mosbaugh to be fully credible. Int. Summary ¶ 54, citing Tr. 11653 (Hayes).²⁰ This statement too misstates the record. Mr. Hayes merely testified that his impression after meeting Mr. Mosbaugh on one occasion was that he was sincere and "credible" based on his position and education. Tr. 11651-52 (Hayes). Intervenor then proposes that the Board's decision should incorporate his entire prefiled testimony by reference. Int. Summary ¶ 54. This is a remarkable suggestion since even Mr. Mosbaugh has acknowledged that portions of his testimony are inaccurate. For example, Mr. Mosbaugh admitted that his

²⁰ There is no support for Intervenor's statement at Tr. 11653.

testimony concerning Mr. Bailey's participation in the April 19 conference call was wrong. Tr. 9746, 9748 (Mosbaugh).

Intervenor states that his tapes are also critical evidence. Int. Summary ¶ 55. Georgia Power agrees that the tapes are important evidence, but they are not definitive. Mr. Mosbaugh's tapes do not capture all of the relevant conversations that occurred (such as the beginning of Call A before Mr. Mosbaugh joined the call). Further, the meaning of taped conversations is not always clear and certain portions are simply inaudible. Intervenor also states that the Board questioned most of the witnesses as to whether they suspected they were being taped and none were. Id. Similarly, he asserts that none of them observed anything unusual in Mr. Mosbaugh's behavior that would have led them to believe that Mr. Mosbaugh may have been setting them up through their statements. Id. Intervenor offers no citations to support these sweeping statements, and Georgia Power does not believe that they are accurate. To the contrary, although Mr. McCoy was not aware that Mr. Mosbaugh was tape recording conversations prior to the revelation of this recording in September 1990, Mr. McCoy testified that in retrospect he could recall conversations where it appeared that Mr. Mosbaugh was attempting to get things on tape. Tr. 3248-49 (McCoy). More importantly, Mr. Mosbaugh knew that he was recording conversations and this knowledge may well have affected his statements. The tapes provide no assurance that any of the statements by Mr. Mosbaugh are candid. Given his posture as a whistleblower and later as a litigant in his Department of Labor case, recorded statements by Mr. Mosbaugh could well be self-serving.

Intervenor proposes that the Licensing Board find that taping was a reasonable method to document his concerns. Int. Summary ¶ 56. Georgia Power submits that such a finding is irrelevant to this case and should not be made by the Licensing Board. Whether Mr. Mosbaugh's taping activity was reasonable is solely an issue related to Mr. Mosbaugh's Department of Labor proceeding and will be the subject of judicial review.

Intervenor states that Mr. Mosbaugh was not responsible for any of the post-April 1990 filings of Georgia Power (such as the "White Papers"). Georgia Power disagrees. Mr. Mosbaugh was present during an August 15 meeting where information was being solicited to prepare the White Papers, possessed information that he could have been provided to make the White Papers complete and accurate, and intentionally chose not to provide the information. GPC PF 412. This omission by Mr. Mosbaugh constitutes deliberate misconduct.

Intervenor states that despite his "complete" non-involvement in "almost all" of the incidents which gave rise to this proceeding, Mr. McCoy and Mr. Hairston attempt to place blame on him. Int. Summary ¶ 59. Intervenor provides two transcript citations pertaining to Mr. Hairston. At the first, Tr. 11571, there is no discussion of Mr. Mosbaugh's responsibility for any misconduct. At the second, Tr. 11598, Mr. Hairston states that Mr. Mosbaugh could have done more on April 19 to resolve the concerns, and specifically could have telecopied the Webb list to the corporate office. This is a fair observation. Mr. McCoy faults Mr. Mosbaugh for not speaking up during the main conference call on April 19, particularly if Mr. Mosbaugh disagreed with the discussion. Tr. 3006-07, 3030-31 (McCoy).²¹ This too is a fair observation. Mr. McCoy does

²¹ Intervenor also cites Tr. 3012 for the proposition that Mr. McCoy blames Mr. Mosbaugh for misconduct. The
Footnote continued on next page

not single out Mr. Mosbaugh, as Intervenor suggests, but admits that there is enough blame to go around. Tr. 3030 (McCoy).

iii. "[Intervenor's Discussion of] Ms. Dixon" (Int. Summary ¶ 60-68)

Ms. Dixon testified in this proceeding that she recalls typing Mr. Cash's list on Friday, April 6. GPC PF 90-91. Intervenor proposes that the Licensing Board find this testimony incredible. Int. Summary ¶ 61. First, Intervenor states that there is no reason to disbelieve her earlier deposition testimony, which she did not change on review. Int. Summary ¶ 62. In her earlier deposition, she could not remember whether she typed Mr. Cash's list on Friday or the weekend. Tr. 8116-20 (Dixon). Intervenor adds, "Nothing was placed on the record which would explain why her initial testimony, that she could not remember the day she typed the list, should not be fully credited. Int. Summary ¶ 62. Intervenor's assertion is incorrect. Ms. Dixon explained on the record that she remembered doing most of the typing on Friday after going back over documents (which included review of time sheets) and preparing for the hearing. Tr. 8121, 8126 (Dixon). It therefore appears that Ms. Dixon's more precise hearing testimony resulted from her efforts to refresh her recollection by review of documents and prepare for the hearing. Her prior inability to remember the day when questioned during her earlier deposition does not render her hearing testimony incredible. Rather, it reflects the fact that Intervenor made no effort at the deposition to help her refresh her recollection, and without preparation Ms. Dixon could not recall the specific the day of the week (four years earlier) on which she had typed a particular document. See Int. Exh. II-160. That Ms. Dixon did not change her deposition testimony when she reviewed

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discussion at that page is unrelated to the diesel generator reporting incidents. There, Mr. McCoy was aware that the management team including Mr. Mosbaugh was not functioning well and had spoken to Mr. Bockhold about it. Tr. 3011-12 (McCoy).

the deposition transcript is also of no account. A deponent's review of a deposition transcript is to identify and correct transcription errors, not to alter accurately recorded testimony. Since the transcript of Ms. Dixon's deposition presumably accurately reflected her deposition testimony and reflected her memory at the time, changes would not have been appropriate. Nor was that testimony wrong. Ms. Dixon's deposition indicated that the Cash list may have been typed on that Friday, and her subsequent preparation confirmed that it did.

Intervenor also asks the Board to find Ms. Dixon an incredible witness because she testified to the order of typing, and the Cash lists were the last items typed into the system. Int. Summary ¶ 63. Intervenor asserts "[t]his supports Mr. Cash's testimony before the OSI that the list was compiled on Sunday." Int. Summary ¶ 63. This argument is insufficient to impeach Ms. Dixon. The fact that the Cash lists may have been the last files created does not mean that those files could not have been created on April 6. Intervenor's characterization of Mr. Cash's OSI testimony is also inaccurate and incomplete. In the OSI interview, Mr. Cash could not remember the date and merely testified that he believed it might have been the day before the meeting in Atlanta. See GPC PF 87. Intervenor also conveniently ignores all the other evidence that strongly indicates that the initial typing was performed on Friday. See GPC PF 87-90.

Next, Intervenor represents that Georgia Power admitted that Mr. Aufdenkampe was asked to "perform this task" (presumably Intervenor means counting starts) on Friday evening. Int. Summary ¶ 64. This representation is also false. In Georgia Power's Response to Intervenor's First Request for Admission (July 7, 1994), to which Intervenor refers only generally (i.e. without page or paragraph reference), Georgia Power admitted paragraph 149 of the OI findings

on Allegation No. 1 to the effect that Mr. Aufdenkampe stated that he received a call from Mr. Bockhold asking him to have Mr. Gus Williams go to the site to count diesel starts. Neither the finding nor the admission made any reference to the date of this telephone call. With respect to Mr. Aufdenkampe's testimony in this proceeding, see GPC PF 85-86.

Intervenor also points to Georgia Power's admission that Mr. Bockhold stated the reason he did not have Mr. Burr gather the test data was that Mr. Burr was going back to Birmingham and Mr. Cash would have better access to the logs on the weekend. Int. Summary ¶ 65.²² Intervenor asks "[i]f the count was done on Friday, why would Bockhold have been concerned about Burr's access to the DG logs over the weekend?" Int. Summary ¶ 66. This query is logically unpersuasive. Obviously, Mr. Bockhold made the assignments before the starts were counted, and if he were unsure that the count could be completed on Friday, he might well have been influenced by Mr. Burr's planned departure on Saturday morning. It makes complete sense for Mr. Bockhold to have assigned the task to Mr. Cash because he knew Mr. Cash would be available on the weekend if that were necessary to complete the task.²³ There is no conflict or inconsistency between Mr. Bockhold's reasoning before the assignments were made and the fact that Mr. Cash was subsequently able to complete a count on Friday evening.

Intervenor next argues that Ms. Dixon did not have the time to complete all of her typing on Friday. Int. Summary ¶ 67. There is no support for this assertion in the summary, and as discussed later in this Reply, Intervenor's subsequent findings significantly mischaracterize the

²² Intervenor inaccurately characterizes this as an admission that Mr. Burr was not tasked with the assignment of counting diesel starts because he had to go out of town Saturday afternoon. Int. Summary ¶ 64. Mr. Burr left the site on Saturday morning. See GPC PF 92.

²³ There were also other reasons why Mr. Bockhold chose Mr. Cash to perform the count. See GPC PF 57.

record. In Int. PF 109, citing Tr. 8130, Intervenor states that "Ms. Dixon estimated that it took about one and a half hours to type the start list for just one diesel." In fact, when asked how long it took to type Document 006, Ms. Dixon replied that she could not answer that question because she could not remember when Mr. Cash gave her the corrections. Tr. 8129. She subsequently testified "I'd say at least an hour and a half, maybe, we sat there on these documents." Tr. 8130 (emphasis added). Thus, the hour and a half estimate pertains to multiple documents. Since Ms. Dixon worked 2-1/2 hours on Friday evening, there is nothing impossible about having spent 1-1/2 hours on Mr. Cash's documents.

Finally, Intervenor states that "Ms. Dixon testified that the DG testing slide was already typed into the system prior to her obtaining the Cash list to type." Int. Summary ¶ 68. He also represents, "That document already had the 18 and 19 start numbers typed into the slide." Id. Both these statements are false. Ms. Dixon testified that Gloria Walker had started the diesel testing transparency but had only completed about the first three lines. Tr. 8104. Further, as reflected in Int. PF 106, Ms. Dixon testified that the 18 and 19 numbers were on the bottom of a draft (which Intervenor understands was handwritten) given to her (Tr. 8167), and not on the transparency that Gloria Walker started. Intervenor then proceeds to argue that the existence of these numbers on the transparency demonstrates that Mr. Cash was not responsible for developing the 18 and 19 numbers. Int. Summary ¶ 68. It does nothing of the sort. That a draft of the diesel testing transparency contained the numbers at the bottom before Mr. Cash's list was typed up merely indicates that, using his handwritten list, Mr. Cash had reported the results of his start count to Mr. Bockhold before the typed list was generated.

iv. "Timing of the Cash List" (Int. Summary ¶ 69-73)

Intervenor argues that if the "18 and 19" numbers which appeared in the diesel testing transparency and the April 9 letter were not developed by Mr. Cash, Georgia Power's failure to meet its burden of proof on this matter would raise an inference that "Intervenor is correct in his 'theory' that the 18 and 19 numbers were developed in Birmingham with the knowledge and consent of Georgia Power upper management." Int. Summary ¶ 69. First, Intervenor misapplies the evidentiary burden to this issue. By his own admission, it is Intervenor that is required in the first instance to meet his "burden of going forward," *i.e.*, he must present a prima facie case concerning the admitted contention. Intervenor's Final Statement of Fact and Conclusions of Law at 9. Therefore, it is Intervenor's burden to go forward on this issue related to his contention, and his burden is certainly not satisfied by raising what even he characterizes as a "theory."

In any event, Georgia Power has introduced substantial evidence that Mr. Cash performed his count on Friday, April 6, and probably updated his list later. See GPC PF 83-93. Specifically, the record shows that while Mr. Cash is uncertain of when he performed the start count, he specifically recalled assisting Mr. Bockhold's secretary, Gloria Walker, with the format for presentation transparencies. Ms. Walker worked on the presentation only on Friday, and did not work over the weekend. Therefore, Mr. Cash initially must have worked on the presentation on Friday. GPC PF 87. Further, Mr. Eckert recalls Mr. Cash working on the diesel start count on Friday, April 6 and he did not work over the weekend. GPC PF 89. Ester Dixon testified at the hearing that she initially worked on the typing of Mr. Cash's list on Friday, April 6, and that she may have typed revisions for him on Sunday. Tr. 8113-14, 8130 (Dixon); GPC PF 90, 91, 93.

Intervenor attaches some special significance to Mr. Cash's testimony at his OSI interview that he did not recall the date he performed the start count, but he thought it was the day before the April 9 presentation.²⁴ Int. Summary ¶ 72. Intervenor credits this tentative testimony as dispositive of the issue without providing any balanced mention of Mr. Cash's hearing testimony that he worked with Ms. Walker on the format for transparencies, and that fact that Ms. Walker worked on the transparency only on Friday, April 6.²⁵ Intervenor also provides no discussion of Mr. Cash's recorded acknowledgment, on April 19, 1990, that the 18 and 19 numbers were the numbers that he had provided to Mr. Bockhold. GPC PF 97. The OSI testimony is weak and inconclusive evidence at best and does not represent the weight of the evidence.

Intervenor also provides no evidence indicating the reasonableness or likelihood of his speculative theory that the corporate office provided the numbers. There is no evidence that anyone in the corporate office was capable of supplying a start count. GPC PF 98. Nor does Intervenor provide any explanation why the corporate office would be predisposed toward these numbers. Intervenor's theory just does not make sense.

v. "George Bockhold" (Int. Summary ¶¶ 74-87)

Intervenor commences his summary of findings pertaining to Mr. Bockhold with an assertion that Mr. Bockhold "oversaw the testing related to the DGs" and "was fully familiar with the testing results for the DGs." Int. Summary ¶ 75. Intervenor provides no support for this

²⁴ Intervenor fails to mention the Cash OSI interview (or his hearing testimony) in the corresponding findings on this issue.

²⁵ We do not know what "mental mechanism" Intervenor is referring to that would give Mr. Cash's tentative OSI testimony any special weight. Int. Summary ¶ 72

assertion, which overstates Mr. Bockhold's involvement in the diesel testing and his familiarity with the test results. See GPC PF 110.

Intervenor proceeds to repeat his assertion that Mr. Cash completed his count on Sunday. Int. Summary ¶ 76. This hypothesis is addressed both above and at GPC PF 83-93.

Intervenor also repeats his theory that the diesel start numbers were developed in Birmingham, and not by Mr. Cash. Int. Summary ¶ 77.²⁶ As discussed above, there is ample evidence to support a finding that Mr. Cash developed the diesel start numbers, and there is no probative evidence to support Intervenor's suggested conclusion that the numbers were developed in Birmingham. In particular, because there were many communications between the site and corporate office, the appearance of the start count numbers in the surviving April 7 draft letter is not probative evidence of, and provides no inference as to, the origin of the numbers. Intervenor's contention that no witness has been able to identify who in Birmingham derived the diesel start count information (Int. Summary ¶ 77) is irrelevant in the face of substantial evidence supporting the conclusion that Mr. Cash developed the diesel start count.

Intervenor maintains that the statement in the April 7 draft (which was the same as the statement included in the final letter) could not have been credible to any person familiar with the DG start program. Int. Summary ¶ 78. Intervenor's assertion is conclusory. He offers no explanation why the statement was unbelievable. Messrs. McCoy and Bockhold testified that they

²⁶ Intervenor states, "Prior to requesting that Mr. Cash conduct this review, Mr. Bockhold had been faxed a draft copy of a COAR letter which had been written in the Birmingham office." Int. Summary ¶ 77. There is absolutely no support for Intervenor's representation that Mr. Bockhold received this fax before asking Mr. Cash to perform his count. The evidence also indicates that while the April 7 draft was typed (as opposed to "written") at the corporate office, it was based on information that had been provided by the site. See Int. Exh. II-126; Tr. 3404-05, 3450 (Bockhold).

were not aware of any discrepancies in the April 9 letter at the time that it was sent out; Mr. Bockhold testified that he was comfortable with the diesel start language which he understood to be consistent with the numbers provided by Mr. Cash and with the transparencies. GPC PF 78-79, 108-113. And there is no evidence that anybody read the letter as indicating or implying the absence of any problems or failures after March 20. GPC PF 115.

Further, there is no basis for the assertion that the definition of a "successful" start was "manipulated" to include certain failures, as Intervenor suggests. Int. Summary ¶ 78. While Mr. Bockhold and Mr. Cash may not have had a meeting of the minds concerning which starts to count (GPC PF 57-66), there is no evidence of willful manipulation of the numbers. See GPC PF 108-115.

Intervenor asserts that Mr. Cash provided Mr. Bockhold with a start count greater than the 18 and 19 numbers, and he also provided Mr. Bockhold a list documenting each start. Int. Summary ¶ 79. Neither of these assertions is supported by the weight of the evidence. See discussion on pages 19-20 above. See also GPC PF 62-63 and n.9, 95-96. Again, the most probative evidence on these points is Mr. Cash's recorded statement on April 19, 1990, in which he acknowledged that the 18 and 19 numbers were the numbers that he had provided to Mr. Bockhold, and indicated that he just gave Mr. Bockhold "totals." GPC Ex. II-2 at 36.

Intervenor continues with the bald assertion that, despite the problems with the Cash list, "Mr. Bockhold had his secretary type the list as a potential slide for the presentation." Int. Summary ¶ 80. There is no evidentiary support for this representation. Ms. Dixon testified that Mr. Cash asked her to type the list, not Mr. Bockhold. Nor is there any direct or probative evidence

that the list was typed as a potential slide. GPC PF 100-06. Mr. Bockhold in fact testified that, to his knowledge, the Cash list was not made or used as a back-up slide to the presentation. GPC PF 103. Moreover, Mr. Cash testified that Mr. Bockhold did not ask him to prepare a table, but rather to just make a list of diesel starts; the typed list is not in the same format as the transparencies. Intervenor then claims that "[t]his document was presumably faxed to Birmingham with the other proposed slides." Int. Summary ¶ 80. Again, there is not one wit of evidence supporting this claim.

Intervenor represents that there was a meeting in Birmingham on Sunday, April 8, in which Messrs. Bockhold, McCoy, Ward, Shipman, and Rushton participated to discuss the COA response letter. Int. Summary ¶¶ 82, 84. This representation is not only inconsistent with the evidence in this case, but it is also unsupported by and inconsistent with Intervenor's own proposed findings. See Int. PF 87. Neither Mr. McCoy nor Mr. Bockhold recall any such meeting on April 8. Mr. Ward recalls that as duty manager that day, he was assigned to call Messrs. McCoy, Shipman, and Rushton to determine a time to review the draft COA response letter. Mr. Ward determined that they would be available for a 1:30 p.m. conference call to discuss the letter. Mr. Ward recalls no further involvement in any call or meeting after that. See GPC PF 105. Thus, there is no basis for Intervenor's assertion that there was a meeting on Sunday, April 8.²⁷

²⁷ Since there is no evidence that there was a decision to drop a slide from the NRC presentation on April 9, there is also no support for Intervenor's contention (Int. Summary ¶ 84) that Messrs. Hairston and McCoy should have known about such a decision, and it is irrelevant who would have been involved in such a decision. Similarly, there is no evidence that the typed Cash list was provided to management (as Intervenor asserts in Int. Summary ¶ 86) -- in fact, the evidence does not even establish that the typed list was the same as the handwritten list which Mr. Cash had used to supply Mr. Bockhold with the numbers. Additionally, Intervenor's contention that Georgia Power presented information in conflict with [typed] the Cash list (Int. Summary ¶ 86) is irrelevant.

Given the total lack of evidence supporting his position and the substantial evidence to the contrary, Intervenor's assertion that the "only reasonable assumption is that the slides from the Cash list were fully discussed in Birmingham and a decision was made not to utilize these slides" (Int. Summary ¶ 83) is preposterous. Georgia Power asks that the Board consider Intervenor's willingness to make such assertions when the Board assesses the relative credibility of the parties. Intervenor's conclusion that there was a decision not to use the Cash list as a slide (*id.*) is wholly unsupported and without merit. This technique of repeating it over and over makes it no more credible.

Intervenor's summary paragraph 84 is even more ridiculous. Intervenor argues that Mr. McCoy must have been involved in the decision [presumably to cut the Cash "slide"] because he "attended the Sunday meeting on the oral presentation and was Mr. Bockhold's direct supervisor." There is no evidence that there was any Sunday meeting. There may have been a Sunday telephone call, but that call was for review of the COA response letter, not the transparencies. Tr. 7797 (Ward); Int. II-17 (at Project No. 048001). Intervenor also states that Mr. Hairston would have been involved in the decision "because it is inconceivable that Mr. Bockhold would make a decision to drop the use of a slide he tasked his secretary to specifically type-up without first discussing this matter with his supervision." This argument is both logically and factually bankrupt. First, Mr. Bockhold did not task Ms. Dixon with the typing of the Cash list; nor is there any evidence that it was prepared as a slide. In any event, the notion that Mr. Bockhold would have telephoned the Senior Vice President if he had decided to eliminate a slide -- this was not the case -- is ludicrous.

Intervenor argues in the alternative that Messrs. Bockhold, McCoy, and Hairston knew or should have known that the diesel start statement in the slide and COA response letter were incorrect. Int. Summary ¶ 85. The evidence does not support this conclusion. See GPC PF 108-115. There was no attempt or intent to mislead the NRC. See GPC PF 119-25. There was no motive for such statements, as it was well known that the NRC knew that there had been problem starts after March 20. GPC PF 120.²⁸

vi. "Burr/McCoy/Hairston" (Int. Summary ¶¶ 88-91)

Intervenor states that Mr. Burr attended the April 9th oral presentation and "was in a position to fully understand the false nature of the DG start slide and the oral information transmitted on the DGs." Int. Summary ¶ 88. There is no support for the suggestion that Mr. Burr recognized any error in the diesel testing transparency. In fact, his testimony was that he did not find anything about it unclear or confusing. Tr. 10857 (Burr). The numbers looked okay to him. Tr. 10865 (Burr). Intervenor makes no reference to this testimony.

Intervenor asserts that Mr. Burr approached Mr. Cash at the end of the meeting, asked Mr. Cash if he had a copy of his list, and Mr. Cash provided the list to Mr. Burr. Int. Summary 89. Intervenor provides no citation supporting these assertions. He fails to note that Mr. Cash was not certain that he gave his list to Mr. Burr, and he gives no credence to Mr. Burr's testimony that he does not recall ever seeing the list. GPC PF 107. Intervenor states that Mr. Cash had no

²⁸ As suggested by Intervenor (Int. Summary ¶ 87), Mr. Bockhold's performance was less than adequate. Mr. Bockhold has acknowledged his performance failures, has been disciplined, and is no longer the Plant General Manager. GPC PF 123, 657-58.

reason "to lie." The question is not whether Mr. Cash is lying, but whether he is in fact correct in his recollection of events that occurred so long ago. The record is simply inconclusive.

Intervenor argues that "it is reasonable to infer that Mr. Burr, the expert on DGs discussed this list with Mr. McCoy and Mr. Hairston while they finalized the COAR language on the plane ride back to Birmingham. Int. Summary ¶ 90-91. While Mr. Burr did ride back to Birmingham on the corporate plane, there is no evidence that he had any involvement with the wording of the April 9 letter. Moreover, the diesel start statement at issue was not revised on that plane ride. See GPC PF 107. Therefore, Intervenor's inference is not reasonable even if Mr. Burr had the list (which is not at all clear). Intervenor's conclusion (Int. Summary ¶ 91) that Georgia Power intentionally provided false information to the NRC (information inconsistent with the Cash list) is likewise unreasonable and indicative of the type of unfounded assertion that Mr. Mosbaugh is willing to make to attack the Company.

(i) "The April 19 LER" (Int. Summary ¶¶ 92-115).

Intervenor asserts that after April 9, 1990 "[t]he NRC requested documentation related to the 18 and 19 numbers. Georgia Power never provided the NRC with the documentation." Int. Summary, ¶ 93. This misrepresents the record. As discussed in Section V.L. below, what the NRC's Mr. Kendall actually requested was for Mr. Stokes to call him and the record establishes that he did so. Mr. Kendall did ask Mr. Stokes to provide him some completion sheets and as soon as Mr. Stokes was able to track them down he provided those documents to Mr. Kendall.

Intervenor contends that

Mr. Mosbaugh, on April 10th, started questioning the 'dew point' information provided to the NRC and the start count information. As is fully set forth in this decision, Georgia Power did not take appropriate steps to review the dew point data and did not conduct an appropriate root cause analysis into this matter.

Int. Summary, ¶ 93. Mr. Mosbaugh did not raise with his management any question concerning the diesel starts information until April 19, 1990. See Section V. K., infra; GPC PF 114-15. In Mr. Bockhold's April 10 meeting, he did raise a question about the April 9 letter's air quality statement. That issue was fully discussed on April 11 in a meeting with Mr. Bockhold and a number of engineers which Mr. Mosbaugh taped (Tape No. 41; see GPC Exh. II-55A). See also GPC PF 544-45. Also, Intervenor's claim that no air quality review was performed is false. As discussed in more detail in Section IX.B below, Georgia Power and the NRC both took reasonable steps to review the diesels' air quality. See also GPC PF 534. Intervenor's assertion that an appropriate root cause analysis was not performed is also false. Georgia Power proposed extensive findings concerning the analysis conducted with respect to the March 20, 1990 1A diesel failure (see GPC PF 563-656), which findings are largely unopposed by Intervenor.

Intervenor states that the 18 and 19 numbers were "reinserted into the [draft] LER on the understanding that they had been confirmed by Mr. Bockhold. Tr. 4764 (Aufdenkampe)." Int. Summary, ¶ 94. Mr. Aufdenkampe said no such thing; what he did say was that "when we signed out the LER," they believed they had confirmation from Mr. Bockhold on start numbers. Tr. 4764.

Intervenor's Summary, ¶¶ 95-96, asserts, in part:

[b]y the afternoon of April 19th, both Mr. Aufdenkampe and Mr. Mosbaugh had developed enough information to document that the

COAR letter contained a material false statement related to the DG operability issue ... [and they] communicated their concerns regarding the COAR and the LER to the corporate office (which had the final responsibility for the wording of the LER). Specifically, they communicated their concerns directly to Mr. Stringfellow, who had responsibility for coordinating information coming into the LER. In addition, they communicated their concerns to Mr. Shipman. Based on these contacts, and subsequent communications between Mr. Aufdenkampe and the corporate office, Mr. Mosbaugh understood that Mr. Hairston and Mr. McCoy had been briefed on their concerns and recognized that the COAR and the proposed LER may contain material false statements.

To be sure, Messrs. Mosbaugh and Aufdenkampe raised to Mr. Stringfellow on April 19 that there had been two failures on the 1B diesel on March 22 and 23, calling into question the statement in the draft LER and the April 9 letter concerning "no problems or failures." Mr. Mosbaugh (and not Mr. Aufdenkampe) also raised this same concern to Mr. Shipman. Intervenor would also have the Board believe that he raised a question about the numbers of starts, but, this is not the case. See GPC PF 143-55, see also Section V.M.iv, infra. Intervenor attempts to distance himself from responsibility for the LER by asserting that corporate had final responsibility for its wording. As demonstrated in GPC PF 241-43, Mr. Mosbaugh's attempt to do so is inappropriate. As discussed in Section V.M.iv below, the record supports the conclusion that Mr. McCoy was aware of the concern about failures of the 1B diesel early on and that he contacted the NRC about that concern -- the same cannot be said for Mr. Hairston. Also, the LER language was revised to address this concern and no one advised the corporate office that the final LER statement was in error.

Intervenor's Summary, at ¶ 97, suggests that Georgia Power executives arranged the late afternoon April 19 conference call "to resolve the DG start issue raised by Mr. Mosbaugh and Mr.

Aufdenkampe." Intervenor cites no support in the record for this statement and Georgia Power is unaware of any. The remainder of that paragraph suggests that Mr. Mosbaugh was intentionally kept away from that conference call. As Georgia Power has demonstrated, this suggestion is absurd. See GPC PF 209-14; see also Section V.M.v, infra.

Georgia Power agrees with Intervenor's Summary ¶ 98, to the extent that it states Mr. Mosbaugh's tapes provide essential evidence to assist the Board in determining the truth about what happened on April 19, 1990.

Intervenor's Summary, ¶ 99, contends "[d]uring this conversation, Mr. McCoy and Mr. Bockhold agreed upon inserting the phrase 'after the comprehensive test program' into the LER in order to avoid having to disclose that there were problems and failures in some of the DG starts." This statement is unsupported by any record evidence and is illogical given that Mr. McCoy contacted Mr. Brockman on April 19 and confirmed that the NRC understood there had been some problem starts in coming out of maintenance on the 1B diesel. See GPC PF 171-73. Int. Summary ¶ 99 also asserts "[s]pecifically, Mr. Aufdenkampe and Mr. Mosbaugh had disclosed to the Georgia Power corporate offices that the phrase in the COAR and draft LER, that the DGs had been tested 18 and 19 consecutive times without problems or failures, was a false statement because there had been problems and failures with some of the starts." This statement is a blatant misrepresentation because neither Messrs. Mosbaugh or Aufdenkampe, or anyone else, ever advised the corporate office on or before April 19, 1990 that the "at least 18" number in the final LER -- or even the 18 and 19 numbers in the draft LER -- were inaccurate. Mr. Mosbaugh's own taped words on April 19 demonstrate that he believed the 19 1B diesel starts number could be

correct if they occurred after the last failure of that diesel on March 23, 1990. See GPC PF 155. Finally, Mr. Mosbaugh's Summary ¶ 99 states "[b]y inserting the phrase 'after the comprehensive test program' into the LER, Georgia Power wanted to modify the start [point] for which they commenced counting the 18 starts. In this manner, Georgia Power intended to make the LER technically correct." Georgia Power did indeed intend to make the LER correct, as Intervenor here admits; but Intervenor's assertion that Georgia Power wanted to modify the starting point of the count is misleading because it suggests that Georgia Power intended to use a different set of diesel starts in the LER than it had referred to in the April 9, 1990 letter. As Mr. Mosbaugh admitted, he knew on April 19 that management intended to present the same start count that had been presented to NRC on April 9. See GPC PF 235; NRC PF 63.

Intervenor urges the Board to find that no one knew the definition of the term "comprehensive test program" and that it was intentionally "made-up ... in order to correct a previously filed materially false statement." Int. Summary, ¶ 100; see also Int. Summary, ¶¶ 101, 107. As discussed in detail in Section V.N below, Intervenor misrepresents the evidence concerning the insertion of this phrase into the LER. While the term is now universally acknowledged to be vague and ambiguous, on April 19, 1990 Mr. Bockhold explained what he meant by the term to Messrs. Aufdenkampe and Shipman, who in turn discussed that definition with Mr. Mosbaugh in the last conference call on this topic between the site and corporate office on April 19, 1990.

Intervenor asserts that

Messrs. Bockhold, McCoy and Hairston were fully aware of the Mosbaugh/Aufdenkampe concerns about the COAR and draft LER prior to the execution of the LER by Mr. Hairston on the late afternoon of April 19th. Despite this actual knowledge, none of these

individuals took any reasonable steps to verify the Mosbaugh/Aufdenkampe concerns, to investigate or correct the potential false statement in the COAR or to even question Mr. Mosbaugh on the basis of his allegations. These actions amount to willful misconduct.

Int. Summary, ¶ 106; see also Int. Summary, ¶¶ 103-05, 107. Intervenor's view of the evidence is as astounding as it is dishonest. As discussed in Section V.N below, while Mr. Hairston (and for that matter, Mr. McCoy) may have been informed that a concern had been raised with respect to the draft LER, he believed that the final LER, as revised, was true and correct when he signed it. As for the April 9 letter, Mr. McCoy called Mr. Brockman to ensure that the NRC did not misinterpret the diesel starts statement as saying there were no problem starts of the diesels after March 20. See GPC PF 171. The Board should reject Intervenor's allegations of willful misconduct concerning the LER.

Intervenor argues that the Board should adopt Mr. Mosbaugh's interpretation of the disputed portion of Tape 58. Intervenor states that he had carefully reviewed the tapes and had an independent recollection of the conversation. Int. Summary, ¶ 108; see also Int. Summary, ¶¶ 109-12. This assertion is very misleading because as his hearing testimony shows, Mr. Mosbaugh's "independent recollection" does not, in fact, include any specific memory of the key statements he now attributes to Georgia Power personnel. GPC PF 223. As discussed in GPC PF 215-26, Intervenor's version is supported only by his imagination. In 1990, even Mr. Mosbaugh did not arrive at this interpretation, although he had carefully listened to his tapes in order to prepare his written allegations to OI.

In his Summary, ¶¶ 113-14, Intervenor shirks all responsibility for the false statement in the LER contending that he (and to some extent Mr. Aufdenkampe) were the only ones trying to correct the draft LER but that once the "comprehensive test program" language was inserted into the LER they were not in a position to effectively challenge its veracity. This is bologna. Mr. Mosbaugh had ample opportunity to advise Mr. Shipman on the final call between the corporate office and the site that the final LER language was false and he failed to do so. Mr. Mosbaugh was the only person who knew that the statement was false and he nonetheless allowed his management, who were completely in the dark concerning the information available to Mr. Mosbaugh (i.e., the Webb list), to submit the false statement. See Section V.N.iv, infra; see also GPC PF 227-42.

Finally, Intervenor claims that Georgia Power's actions concerning the LER evidence were deliberate and willful misconduct. Int. Summary, ¶¶ 92, 113. As discussed in detail in Section V.N. below the record does not support such a finding. While errors were made, the record demonstrates that, with the apparent exception of Mr. Mosbaugh, such errors were not intentional or reckless. See GPC PF 251-57.

vii. "The Correction of the April 19 LER" (Int. Summary, ¶¶ 116-135).

Intervenor finds great fault with the promptness with which Georgia Power's management corrected the April 19 LER and the subsequent actions of the PRB. Int. Summary ¶¶ 116-117. These proposed findings are unsupported conclusory assertions. A review of the actual time line demonstrates a series of actions to assure that the revised LER had correct, verified information. See, GPC PF 258-271. The time line can be broken down as follows:

April 20 - April 30: Mr. Mosbaugh is on notice from Tom Webb that the LER appeared incorrect. Mr. Mosbaugh completes a list of 1B starts.

April 30 - May 2: Mr. Mosbaugh provides Mr. Bockhold his list of starts/memorandum. Mr. Bockhold requests that Mr. Mosbaugh have Mr. Cash verify the list. GPC Exh. II-107.

May 2 - May 15: Draft LER revisions are developed and reviewed by PRB at site; approved draft revision sent to corporate.

May 24, 1990: Mr. Hairston informs Stewart Ebnetter, Region II Administrator, of LER error. (NRC PF 116.) Mr. McCoy calls Mr. Brockman.

May 31, 1990: Revised LER draft signed off by corporate licensing personnel. (NRC PF 113.)

June 8, 1990: Mr. Bailey and Mr. Rushton (corporate) attempt to determine "the exact story" on the original LER count error. (NRC 114, 115.) Mr. Hairston reviewed a draft LER revision and directed the SAER audit to find out the right number. (NRC PF 122.)

June 14, 1990: Mr. Hairston informs Mr. Ebnetter of the SAER audit. Mr. Aufdenkampe informs the NRC Resident Inspector about the LER error. (NRC PF 117, 118.) Mr. Shipman calls Mr. Brockman.

June 8 - June 29: (noncontinuous): SAER audit. (GPC Exh. II-15.)

June 29, 1990: Mr. Hairston directs SAER audit report be given to the Resident Inspector.

Intervenor attempts to bolster his argument of inadequate management responsiveness by criticizing the alleged lack of response to the Georgia Power/NRC meeting in late April - early May, 1990. Int. Summary ¶¶ 118-121.^{22/} In fact, Georgia Power did take action to address the NRC's expressed concerns. For example, in the summer of 1990, following the NRC's frank observations to Georgia Power officers, multiple team building meetings were held to strengthen internal communications and to convey management's expectations towards nuclear safety. Hairston Rebuttal at 7-10. Indeed, the May 8, 1990 meeting taped by Mr. Mosbaugh (GPC Exh. II-183A) reflects frank, open communication between the corporate office and the site, and between managers and employees which was designed to directly identify and address problems. As Mr. Hairston explained:

Well, when we got back and we talked about it, we felt like if we couldn't communicate with the NRC and with each other, then root cause would never work out right. Aggressively pursuing equipment problems wouldn't work out right. That it was such a bed-rock issue -- and I'm not going to go back into the July meeting [on team building] but the issue that I really picked on was talking to each other. If we can't talk to each other -- this is not an issue we had a failure to communicate with NRC, even though that's how this is framed. This is an issue of our failure to communicate with each other that led to improper communication to the NRC. It is absolutely fundamental.

Tr. 11575 (Hairston).

^{22/} The last portion of Int. Summary ¶ 121 addresses "illegal transfer" issues by arguing that Georgia Power upper management, including Mr. Dahlberg and the management council failed to respond to this meeting. No basis is cited and, therefore, this argument should be stricken.

The discussions at the plant between Mr. McCoy and his managers similarly reflect Mr. McCoy's open discussion of the NRC's views expressed at the meeting. GPC Exh. 183 at 7-9. See also Section V.V.iii., infra, concerning Georgia Power's response to the meeting with the NRC.

Intervenor next requests the Board to find that the removal of Mr. Mosbaugh as a member of the PRB was retaliatory. Int. Summary ¶¶ 123-128. As discussed in Section V.C., below, this is an issue which is outside the scope of this NRC proceeding. Moreover, Mr. Mosbaugh is requesting a finding not reached by the Secretary of Labor in Mosbaugh v. Georgia Power. The DOL Administrative Law Judge, in contrast, did address the specific issue:

The record shows that Mosbaugh should not have been surprised that his job slot would be eliminated in the approaching 1990 reorganization, nor that Tom Greene would "come back" from SRO school to his job slot at about the time he did so. There is no evidence that Greene's stay at SRO school was shortened, thus to provide a pretextual basis for ousting Mosbaugh. The reasons stated for Mosbaugh's removal from the Plant Review Board were entirely credible in those circumstances, as were the reasons for Bockhold's giving Mosbaugh special assignments prior to the SRO school, and for taking away his company car in August. From all appearances on this record, McCoy and Bockhold collaborated in assisting Mosbaugh, during a time he was not making things easier for them, by having Mosbaugh assigned to SRO school, a highly desirable assignment for a GPC employee with his credentials. Whatever could have been their private motivations for doing so, it was an assignment favorable, not adverse, to Mosbaugh's career interests.

Recommended Order, Mosbaugh v. Georgia Power, October 30, 1992 at 36-37 (emphasis supplied). Accordingly, when the DOL trier of fact actually addressed the issue of Mr. Greene's resumption of his position on the PRB, the conclusion reached was contrary to the position Mr. Mosbaugh takes in this proceeding. The Intervenor's argument of "temporal proximity" (Int.

Summary ¶ 126) also must fail where, as here, the previously-anticipated, normal course of events (i.e., Mr. Greene's return from SRO training to his permanent position) explains the proximity between "adverse action" and protected activity. In any event, Mr. Mosbaugh begrudgingly acknowledged that Mr. Greene merely reassumed his position on the PRB as an extension of reassuming the Assistant General Manager of Plant Support position on the PRB. Tr. 9626-9627. See also Bockhold Rebuttal at 12-13. Intervenor's dramatization of his February 7, 1990 meeting with Mr. Bockhold (Int. Summary ¶ 127) is also one-sided. For a full discussion, see Section V.C.iii, below.

With respect to Int. Summary ¶ 129, Intervenor has made no showing that his June 6th DOL complaint prompted "immediate action" to correct the LER. First, the record is silent concerning the timing of Georgia Power's knowledge of the complaint. Second, Georgia Power had already taken action to correct the LER and inform the NRC of the error. GPC PF 260-266.

Intervenor submits that June 8 statements which he and Mr. Aufdenkarpe made to corporate representatives led to the corporate office's thorough understanding of the nature of the LER error and its underlying causes. Int. Summary ¶ 130. This is not true. See, generally, NRC Exh. II-35. The transcript of the relevant conversations demonstrates that Messrs. Rushton and Bailey, upon attempting to understand "the exact story" of the LER error, were given conflicting and overly general accounts of the basis for the LER's error. *Id.* at 8. "I'm not really sure what you're looking for with respect to the whole story. But I'm not sure anybody has a whole story as to why we got the misinformation in there." *Id.* at 6.

Intervenor, without any citations to the record, argues that the SAER audit of diesel start counts was originally very broad and was later narrowed. Int. Summary ¶¶ 132-134. The Intervenor suggests that Georgia Power upper management "knew that only through interviewing Mr. Bockhold, Mr. Cash and others, could the actual cause of the problem be identified." Int. Summary ¶ 134. Upper management, according to Intervenor, should have attempted "to determine who was responsible for the false statements and why those committed those actions." *Id.* In furthering this argument Intervenor misrepresents Mr. Frederick's impression of the original scope of the audit. Int. Summary ¶ 132. Intervenor implies that Mr. Frederick was tasked to review "everything" when, in fact, Mr. Frederick in the transcribed discussion explained that "everything" meant "all the logs that supposedly exist on it." NRC Exh. II-16 (revised) at 2. Furthermore, Intervenor continues to attempt to misconstrue the meaning of "narrow scoped". See, GPC PF 314. As Mr. Frederick testified, the limited scope with which he was tasked was the determination of the correct number of starts which should have been in the April 19 LER. Tr. 4162-4163 (Frederick). Intervenor presented no evidence that the methods used by the auditors were limited or directed. Similarly, there is no evidence that the scope was "later narrowed." Finally, the questions which the Intervenor maintains should have been posed by Messrs. Hairston and McCoy (Int. Summary ¶ 134) are ill-founded. Who was responsible for the false statements and why they committed those actions might have been observations under other circumstances. Intervenor improperly assumes that the SAER audit was constrained in identifying performance failures when it was tasked by focusing on the results. There is no evidence of such a limitation.^{30/}

^{30/} Consider, for example, a situation where the Diesel Start Log had been updated for the time frame of a diesel start count, completion sheets had been generated and distributed as intended, and the counter made an arithmetic mistake. The SAER auditors' efforts would have lead to a different conclusion. Of course, the auditors at the outset did not know what the documentation would show was the true state of diesel starts.

viii. "The June 29th Cover Letter" (Int. Summary, ¶¶ 136-140).

Intervenor assumes that Mr. Hairston and Mr. McCoy, because they were involved in the development of the June 29th cover letter, were informed of different reasons for the misstatements in the April 9 letter and April 19th LER than the reasons in the SAER audit. Int. Summary, ¶¶ 136-137. In Intervenor's mind, these reasons were not pursued but, instead the SAER audit conclusions were "misused to rationalize an untruthful explanation." Int. Summary, ¶¶ 136-138.

Georgia Power does not dispute the direct involvement of Mr. McCoy and Mr. Hairston in the development of the June 29 cover letter. No evidence exists, however, that they were aware of inaccuracies or false assumptions in the SAER audit report, or that Mr. Mosbaugh's concerns expressed to Mr. Majors or to the PRB members were conveyed to them. The PRB approved the revised LER and associated cover letter with only an editorial change. (GPC II-44 at 25.) Mr. Majors was requested only to determine whether this change was acceptable to Mr. McCoy (*Id.* at 26) and, therefore, Intervenor's argument is speculative and contrary to the evidence. Intervenor also mischaracterizes the tape transcript of June 29th conversations (GPC Exh. II-44). Int. Summary ¶ 138. That the audit results were appropriately reflected in the June 29, 1990 LER cover letter can be seen by comparing statements in the cover letter with corresponding statements in the SAER audit on which they are based:

1. "The number of successful starts included in the original LER included some of the starts that were part of the test program." (Cover letter, GPC Exh. II-16).

"Therefore, successful starts made during the test program were counted." (Special QA Audit at 4; GPC Exh. II-15.)

2. The difference is attributed to diesel start record keeping practices . . . (Cover letter).

"Recommendations - The error introduced in the LER appears to be the result of incomplete documentation. It was determined that on the date of the LER submittal, entries in the Diesel Generator Start Log were not up to date. Additionally, data forms generated by the Control Room during each start had not been processed." (Special QA Audit at 4.)

"Evaluation: The Diesel Generator Start Log was found to be substantially behind with regard to entries and diesel start evaluations. Substantial delays were found in processing information on diesel start attempts from the Control Room to the diesel system engineer. When combined, these items prevented having a single source document readily available that reflected diesel starts and valid tests . . ." (Transmittal letter to Special QA Report.)

3. "The difference is attributed to . . . the definition of the end of the test program." (Cover letter.)

"Also it appears that confusion about the specific point at which the test program was completed exists." (Special QA Audit at 4.)

The foregoing comparisons demonstrate high fidelity between the statements in the SAER audit and the representations made by Georgia Power in the June 29th cover letter. Clearly, this is not "misuse" of the audit but, rather, faithful reliance upon it.

In one broad stroke, Intervenor also contends that the June 29th PRB poll on the revised LER cover letter demonstrates Georgia Power's willful and careless disregard in submitting a false statement in the cover letter. Int. Summary ¶ 139. The Staff is more analytical in its review of the cover letter, and specifically examines the actions of the PRB members and the actions of Georgia Power's officers. NRC PF 145-146. Intervenor argues that the transcript of the June 29th tape "speaks for itself" and demonstrates "a complete breakdown in the PRB decision-making." Int. PF 139. Both the Staff and Georgia Power observe that Mr. McCoy and Mr. Hairston were not aware of the letter's inaccuracy or incompleteness. GPC PF 344; NRC PF 146. The Staff also recognizes the highly subjective views inherent in the PRB members' weighing of Mr. Mosbaugh's statements against the statements of Messrs. Odom, Webb, and Frederick. NRC PF 145.

Georgia Power agrees with the Staff that the performance failures of the PRB members were based on their subjective evaluation of Mr. Mosbaugh's concerns. GPC PF 347. Their situation on June 29th was complex and not easily evaluated by simply listening to the tape of their conversations. For almost a month, the SAER group had reviewed the diesel start count issue. Since early May various drafts had been submitted to the PRB with different numbers of "successful starts." The audit was a strong response by management to address the issue. The SAER work product understandably was considered highly authoritative by the PRB members. One of the auditors had a fervent belief in its conclusions, and he said so. GPC PF 337. Mr. Mosbaugh raised several concerns. At this time he had the Webb list since April 19th, his April 30 start list and an extensive and detailed allegation which he developed in the April-May time frame (including an analysis of the various starts omitted from control logs (Tr. 5276, 5778,

referring to GPC Exh. II-73B)). But, he did not provide these documents or even refer to them or the information which they contained as a factual base. Mr. Webb, who had been involved in the development of the original LER and was the licensing engineer responsible for LER drafts, thought the cover letter addressed the problem. Webb Rebuttal at 14-15. Mr. Webb also thought that the cover letter clarified prior correspondence by converting to terminology recognizable by the NRC and updating the LER to the current time. Tr. 13302-3. Messrs. Webb and Odom took issue with Mr. Mosbaugh's rendition of historic facts; Mr. Odom told Mr. Greene that on April 19th they "couldn't tell in a lot of cases what was going on" (GPC II-44 at 19), and he was right. GPC PF 327. In responding to Mr. Greene's questions only with questions of his own (GPC PF 331), Mr. Mosbaugh did not appear authoritative. Others did. GPC Exh. II-44 at 18-19: "that's not correct"; "that's not true"; and at 28-28. This is not to "blame shift," as suggested by the Staff. NRC PF 145. It is simply a recognition of the facts and circumstances affecting the actions of the PRB members. Viewed in this light, the PRB members fell far short in resolving Mr. Mosbaugh's concerns. But their reliance on the SAER audit and the observations of Messrs. Webb, Odom and Frederick show that the PRB believed there was a legitimate basis for the cover letter's statement concerning the cause of the original LER's error.^{31/} With respect to the April 9 letter's error, the Staff correctly observes that the word "clarify" is subject to different connotations and influenced the ability of Georgia Power personnel to focus on the different durations of the start counts. NRC PF 144. However, the statement was intended to show the relationship of the April 9 letter to the corrected LER. Tr. 6343-6344; 6349 (Majors).

^{31/} Even though these assessments were incorrect, they were reasons credible to the PRB members and with a documented factual basis. Their actions were not designed to mislead the NRC. Wrangler Laboratories et al., LBP-89-39, 30 N.R.C. 746, 780 (1989).

ix. "August 30th Letter and the Pattern of Conduct" (Int. Summary, ¶¶ 141-142).

Intervenor's summary concerning the August 30 letter states:

Once again, corporate officials, led by Mr. McCoy, took direct charge of this issue and drafted the letter for the NRC. This letter again demonstrated a complete failure of Georgia Power to conduct an adequate root cause review and again demonstrated the extreme reluctance of Georgia Power to properly identify and correct the wrongdoers. Once again, managers within the PRB were pressured by Mr. Bockhold to accept the "directed resolution" of this matter from Corporate. Once again, material false statements were submitted to the NRC.

Int. Summary ¶ 141.

As discussed in detail in GPC PF 348-400 and in Section V.R. below, Intervenor's allegations of wrongdoing with respect to this letter are meritless. While the letter was drafted in the corporate office, there was extensive review of the draft by plant personnel and a number of substantive changes were made. There was no inappropriate control exercised by corporate over the language of the letter. GPC PF 366-68; NRC PF 155; Section V.R.viii, *infra*. There is absolutely no basis for the suggestion that the corporate office "directed [a] resolution" of the issue.

NRC did not request, and Georgia Power did not purport to provide in the August 30 letter, a complete root cause analysis of the error in the April letter. *See* GPC PF 349-50; Section V.R.i, *infra*. Mr. Mosbaugh's wild speculation that the PRB members in the August 30 meeting were "pressured by Mr. Bockhold to accept a 'directed resolution' of this matter from Corporate" is not supported by the record. *See, e.g.*, GPC PF 366-68; NRC PF 155. Moreover, the

testimony of PRB members Messrs. Greene and Aufdenkampe specifically contradicts this allegation. See GPC PF 389-93.

V. Intervenor's Findings of Fact [on Diesel Starts]

A. "Site Area Emergency" (Int. PF 1-8)

While Georgia Power does not find fault with the accuracy of any of the findings Intervenor included in this section, they are incomplete. Intervenor fails to mention that the NRC was promptly informed of the problems on the 1B diesel, was briefed concerning the planned test program, witnessed diesel testing, and received information concerning the Company's review of diesel air quality. See GPC PF 12-16; NRC PF 12-16.

B. "Motive"

i. "Hairston Philosophy" (Int. PF 9-14).

Intervenor mischaracterizes Mr. Hairston's testimony respecting his nuclear plant operating philosophy. Intervenor's PF 9 implies that Mr. Hairston placed his goals of staying on line and keeping refueling outages short before the safety of the plant. Mr. Hairston testified that he has told a story many times about a speech he gave at an INPO Plant Manager's Conference in which he stated his two goals were to stay on line and have short refueling outages. At the Conference, another utility executive came up to him and said safety was his only goal. Mr. Hairston explained: "obviously safety is a foundation. It is the absolute foundation that you're operating on. It is a given. It is not a goal. Your goals are to generate power." Tr. 9387-88. Contrary to Intervenor's implication, Mr. Hairston's philosophy is to place safety before his goal of generating power.

Intervenor's PF 10 states "[t]he nuclear operating philosophy espoused by Mr. Hairston is that which was introduced by Mr. Farley." Intervenor cites no support in the record for this statement and Georgia Power is unaware of any.

Intervenor's PF 11-14 cite testimony from the Phase I hearing (illegal license transfer allegation) and conclude that "Mr. Farley's involvement in establishing the Plant Vogtle and Plant Hatch outage philosophy evidences his control over GPC's nuclear operations." These proposed findings are an attempt to reargue the Phase I testimony and should be stricken as untimely. In any event, Georgia Power fully addressed Intervenor's allegation that Mr. Farley established the Plant Vogtle outage philosophy in Georgia Power Company's Proposed Findings of Fact and Conclusions of Law with respect to Intervenor's Illegal License Transfer Allegation (February 13, 1995) at 155-58.

ii. "Cost of Generation" (Int. PF 15-22).

Intervenor's PF 15 states "Mr. Bockhold stated to Mr. Mosbaugh it was sometimes better, given the value of generation of these plants, 'just to take the violations.'" However, Intervenor's findings ignore Mr. Bockhold's Rebuttal Testimony that he didn't remember such a statement and that it "would be inconsistent with my approach to plant operations. Such an approach would also be inconsistent with the operating policies voiced by my superiors." Bockhold Rebuttal at 6. Given the seriousness of this finding -- deliberate violations of NRC requirements are acceptable in order avoid unplanned outages -- one wonders why there is no tape to support Intervenor's uncorroborated testimony.

Intervenor's PF 16 and 21 assert that Mr. Bockhold improperly hurried the restart of Vogtle Unit 1 following the site area emergency and that root cause testing did not get support because outage activities were given priority. Intervenor claims other Georgia Power managers criticized this approach. Intervenor cites Mr. Mosbaugh's Prefiled Testimony and four tape transcripts, Int. Exhs. II-19, 21, 22 and 247.

Intervenor does not present the evidence which is contrary to his view. In fact, no witness supported him. Thus, Mr. Bockhold denied that he pushed the restart schedule at the expense of root cause testing and analysis in his Rebuttal Testimony at 16-17. Mr. Mosbaugh could not provide any support for his assertion that Mr. Bockhold's statements on Tape 25 (Int. Exh. II-19) suggested something other than the NRC would be frustrated if they could not determine the root cause after having put forth a considerable effort. Tr. 9598-601 (Mosbaugh). Others supported Mr. Bockhold's testimony. Mr. Stokes testified that Mr. Bockhold was supportive of the efforts to get to the bottom of the diesel problem; Mr. Harvey Handfinger testified that he observed no undue pressure to restart the plant. See GPC PF 648-51. With respect to the comments of Mr. Frederick on Tape 89 (Int. Exh. II-22B), Intervenor simply ignores Mr. Frederick's testimony at the hearing concerning those comments which contradict Intervenor's view. See GPC PF 652-55. As for Tape 32 (Int. Exh. II-21) which contains a conversation Intervenor had with Messrs. Mike Horton and Cliff Miller on April 4, 1990, their comments merely suggest that the Company had not gone far enough in its investigation of the root cause. Georgia Power has not maintained otherwise; at this point in time the Company's evaluation of the root cause *was* continuing and thereafter Wyle Laboratories was contracted to do further investigative work. See GPC PF 575-81.

Citing Mr. Mosbaugh's Prefiled Testimony and an April 7, 1990 transcript of an IIT meeting, Intervenor's PF 19 states that "[d]uring this time period, Georgia Power explained that the root cause was due to the intermittent failures of the jacket water switches." This mischaracterizes the April 7 IIT transcript which indicates that Mr. Bockhold advised the IIT that the "probable cause" was associated with an intermittent problem. Int. Exh. II-20 at 8, 12. Intervenor's Finding 20 goes on to say that there were no data or test results to support Georgia Power's conclusion as to the probable root cause. This too is inaccurate. As explained in detail in GPC PF 564-76, Georgia Power's initial identification of the probable root cause was based on the review of the results of the on-site test program and the evaluations of the Vogtle technical staff, vendor representatives and IIT members. There were daily discussion among these groups concerning the root cause of the March 20 diesel failure. Intervenor's snapshot approach to the evidence should be rejected.

Based on his PF 15-21, Intervenor proposes that the Board find "that this philosophy provided a motive for Georgia Power to mislead the NRC about diesel generator reliability and air quality by making material false statements to convince the NRC that it was appropriate to grant restart." Int. PF 22. Apart from the opposing evidence discussed above, it is not logical to infer an improper motive on the part of Georgia Power managers given the high degree of attention from numerous individuals that the diesel generator failure received in the days following the site area emergency. A number of NRC personnel as well as vendor representatives were heavily involved in the review of the cause of the diesel generator failure in this time frame. See, e.g., GPC PF 4-16, NRC PF 4-16.

C. "[Alleged] Intimidation of Mr. Mosbaugh"

Intervenor PF 23 claims that "Allen Mosbaugh did reasonably report his concerns even in the face of intimidation," citing the Secretary of Labor's recent decision on November 20 and proposing that the Board find it is bound by the Secretary's determination concerning Mr. Mosbaugh's termination. Mr. Mosbaugh's termination from Georgia Power in October 1990 is not at issue in this proceeding. Nor is it material to any of the diesel generator reporting issues. Obviously, Mr. Mosbaugh's discharge in October 1990 cannot have effected his prior actions in April 1990. Further, the corporate decision addressed in the Secretary's Order -- that Mr. Mosbaugh should be discharged because of his taping -- is not probative evidence of any retaliatory animus by Mr. Bockhold or others at the site.^{32/}

Intervenor's PF 23, citing Mr. Mosbaugh's Prefiled Testimony at 8 also claims that

While Mr. Mosbaugh did not feel comfortable raising his concerns with senior executives he did however bring them up with his counter-parts. The Board recognizes the fact that Mr. Mosbaugh

^{32/} Should the Board decide otherwise, Georgia Power observes that facts adduced at the license amendment hearings with respect to the issuance of LER 90-006 on April 19, 1990 stand in sharp contrast to the Secretary's findings concerning those events -- which were based on Mr. Mosbaugh's testimony before the DOL in March 1992. The Secretary's Order, at 4, adopted Mr. Mosbaugh's testimony and stated that after seeing the April 9 letter, Mr. Mosbaugh "determined that Georgia Power may have intentionally misstated the reliability of the generators.... Mosbaugh reported the false statements to his managers.... [Then] Mosbaugh reviewed a draft [LER] ... and [also] promptly reported the false information in the draft to responsible managers, but the final LER submitted to the NRC retained the false information." With respect to Mr. Mosbaugh's involvement in the April 19 LER, based on the extensive record developed in the license amendment proceeding (see GPC PF 126-260), the Secretary's findings are far from accurate. If the Licensing Board takes the Secretary's Order into consideration, it should conclude that such Order made inaccurate findings concerning Mr. Mosbaugh's actions concerning LER 90-006.

Because Georgia Power did not receive the April 19, 1990 tapes and did not learn about the Webb list and Mr. Mosbaugh's statements to NRC-OI prior to the close of the DOL hearing record, Georgia Power has filed, on December 13, 1995, a Motion to Reopen the Record and for Further Hearings with respect to Mr. Mosbaugh's DOL complaint on the grounds that this after-acquired evidence compels a different outcome in that proceeding.

felt intimidated by a series of events that had occurred between January 7 and March 20, 1990. These events significantly increased Mr. Mosbaugh's concern about the management culture, his hesitation in directly confronting senior executives as well as his ability to be heard when advancing concerns within such a culture.

Intervenor also claims that his perception of what had occurred at a January 1990 meeting stayed with him until April 19, 1990. Int. PF 35. Intervenor is apparently suggesting that this is a reason why he did not pursue his concerns to their logical conclusion on April 19, 1990. This is preposterous. On April 19, Mr. Mosbaugh was not afraid to raise his concerns to Mr. Stringfellow -- he and Mr. Aufdenkampe told Mr. Stringfellow the draft LER was a "material false statement" -- and to Mr. Shipman (he said "if anyone said that there weren't any failures, you know, that's just not true." Int. PF 194). In light of these statements, it is wholly illogical to accept that Intervenor did not explain the Webb list to Mr. Shipman on the late afternoon conference call of April 19, 1990 because he felt intimidated. Moreover, there is no doubt that he understood the significance of the Webb list. GPC PF 235-36; NRC PF 63, 96.

i. "Backstabbing Meeting" (Int. PF 24-35).

Intervenor selectively cites testimony from the record to support his view of the January 12, 1990 "backstabbing meeting." Citing predominantly his own testimony and his notes of the meeting (Int. Exh. II-133), he states that he "felt intimidated upon finding out that Mr. Bockhold viewed his pursuing the dilution valve issue, as 'not supporting the directed resolution' and that my actions were considered 'backstabbing.' This meeting increased his concern because Mr.

Bockhold did not address the failure to comply with regulations."³³ Int. PF 24; see also Int. PF 25-31. Intervenor totally ignores substantial evidence in the testimony of Messrs. Kitchens and Bockhold which opposes his view.

Mr. Bockhold testified that he held a meeting with Mr. Kitchens and Mr. Mosbaugh in January to address improving teamwork and cooperation between the Operations and the Plant Support organizations that they headed, which had been a concern for some time. He explained that Mr. Mosbaugh was not working hard enough to develop cooperation and synergy between the departments and Mr. Kitchens was responsible for allowing the rift between the two organizations to continue. Prompted by Mr. McCoy's and his concern over this problem,³⁴ Mr. Bockhold held the January, 1990 meeting to tell both Mr. Kitchens and Mr. Mosbaugh that they needed to work harder on such cooperation. This was a management improvement meeting -- a team building session. Neither one of them was singled out. Mr. Bockhold had both of them discuss their personal faults in management style and how they might improve upon them; he listed his own faults first. Bockhold Rebuttal at 2-4. He further testified that there was no connection between this meeting and Mr. Mosbaugh's submission of allegations to the NRC. At the time he did not know or suspect that Mr. Mosbaugh had sent any allegation to the NRC. He didn't believe he even knew there was any NRC-OI investigation until the end of January. Id. at 4. Mr. Bockhold also testified that, while he did not recall it, the word "backstabbing" may have been written on his white-board. If it was, he believed it was part of the feedback that he had gotten from the plant

³³ Initially, we note that Mr. Mosbaugh's Prefiled Testimony, at 8, is misrepresented. It reads that "[t]his meeting increased my concern because Bockhold did not address safety or complying with regulations..."; it does not state "failure to comply with regulations."

³⁴ Mr. McCoy testified at the April 17, 1995 hearing that the plant management was not functioning well, not supporting each other, and not resolving their differences. See Tr. 3011-12 (McCoy).

staff, indicating that the plant staff felt there were problems between the two organizations that needed to be resolved. Tr. 13347-48.

Mr. Kitchens also testified on this topic. He remembered the meeting but from his notes believed the meeting actually took place on January 12, 1990. He corroborated Mr. Bockhold's testimony on the purpose of the meeting and the approach that Mr. Bockhold took during the meeting. He did not recall Mr. Bockhold's use of the term "backstabbing" during the meeting. Kitchens Rebuttal at 2-3. He also did not recall any mention of the dilution valve issue at that meeting; Mr. Mosbaugh's notes (Int. Exh. II-133) are consistent with his recollection. Mr. Kitchens believed that Mr. Bockhold's criticisms were directed as much toward him as toward Mr. Mosbaugh and he specifically recalled that Mr. Bockhold called him "pig-headed" at the meeting. He left the meeting with the belief that Mr. Bockhold had raised a significant issue about his performance and that it could affect his career if he failed to address that issue. Mr. Kitchens testified that the meeting was a very candid exchange of views, observing that Mr. Mosbaugh's notes indicated that he and Mr. Mosbaugh expressed their criticisms of Mr. Bockhold at that meeting. Id. at 3-4. Mr. Kitchens further testified that, at the time of this meeting, he did not know Mr. Mosbaugh had made allegations to the NRC. He recalled that he became aware of the OI investigation into the dilution valve issue on February 7, 1990, and did not learn that Mr. Mosbaugh was the alleged on that issue until several months later. Id. at 4; Tr. 13597-601 (Kitchens). Mr. Kitchens perceived no intimidation of Mr. Mosbaugh at the January meeting. Id. at 5. Mr. Kitchens also testified at the hearing that the dilution valve issue was not discussed at the January meeting and he thought that issue had been resolved by then. He said the fact that Bockhold had called a meeting about cooperation made it more important to him and he felt defensive at the meeting.

While the three of them said both positive and negative things about each other at the meeting, Mr. Mosbaugh's notes (Int. Exh. II-133) reflected only the negative comments. Tr. 13637-42 (Kitchens).

Finally, Mr. Kitchens testified that he pursued the performance issues raised in the meeting. He and Mr. Mosbaugh discussed how they could improve the communications between their organizations. He suggested that they attend each others' staff meetings, although, while Mr. Kitchens attended several plant support staff meetings, Mr. Mosbaugh did not attend any operations staff meetings. This effort was recognized in Mr. Kitchens' annual Performance Appraisal later in 1990, which stated that he and Mr. Mosbaugh had achieved "peaceful coexistence" and that their organizations "worked effectively together," but that more cooperation was required in this regard. Id. at 4, GPC Exh. II-187.

On cross examination, Intervenor was not able to provide any support for the "inference" he drew that Mr. Bockhold and/or Mr. Kitchens knew, at the time of the January meeting, that Mr. Mosbaugh was the source of the anonymous allegation concerning the dilution valve issue. Tr. 9405-14 (Mosbaugh). In fact, at Mr. Mosbaugh's Department of Labor proceeding, Mr. Bockhold testified that, at the time they learned there would be an OI investigation, he believed that the allegation may have come from someone in the plant's Engineering Department. Int. Exh. II-233 at 691. Intervenor's inference should not be accepted over the testimony of Messrs. Bockhold and Kitchens cited above.

Intervenor's PF 26 states that "Mr. Bockhold also made statements regarding the fact that there had to be a unified position between the Assistant General Managers and the General

Manager." Intervenor cites his own testimony and contemporaneous notes (Int. Exh. II-133) in support of this statement. However, there is nothing in Mr. Mosbaugh's notes to support this statement. This leaves his self-serving testimony as the sole basis. It is hard to believe that Mr. Mosbaugh would not have recorded such a statement in his notes if, in fact, it had been said.

Intervenor's PF 32 states:

Mr. Bockhold stated that the purpose for this meeting was to counsel Mr. Mosbaugh because his attitude and cooperation were not improving. Bockhold Rebuttal at 3. However he admitted that a month later he gave Mr. Mosbaugh a performance review that stated his communication skills were "fully acceptable." Tr. 13332 (Bockhold), Int. II-232. Mr. Bockhold also told Mr. McCoy during this period that Mr. Mosbaugh's communication skills were improving. Int. II-233.

Intervenor totally mischaracterizes Mr. Bockhold's Rebuttal Testimony, at 3, which states that he called a meeting with

Mr. Kitchens and Mr. Mosbaugh in January to address improving teamwork and cooperation between the Operations and the Plant Support organizations that they headed....

The lack of cooperation between these two organizations had been a concern for some time. It was one of the main items that the plant staff needed to work on. The situation was a problem, in part, because Mr. Mosbaugh was not working hard enough at bringing the Vogtle organizations together, to develop cooperation and synergy between the departments. He was not asking people how he could help them, how he could support them, how he could resolve problems. Mr. Kitchens was also responsible for allowing the rift between the two organizations to remain without taking action.

Contrary to Int. PF 32, the purpose of the meeting was not to single out and "counsel Mr. Mosbaugh because his attitude and cooperation were not improving" as Mr. Mosbaugh now perceives.

Mr. Bockhold stated at the hearing that he gave Mr. Mosbaugh a "Fully Acceptable" rating in the communications area in February 1990. However, he explained that "Fully Acceptable" was a marginal rating. For a manager in Mr. Mosbaugh's position at the time, higher ratings, such as commendable or excellent were expected. Tr. 13332-33 (Bockhold). He also explained to Mr. Mosbaugh during the February 23, 1990 meeting which Mr. Mosbaugh secretly taped that more effort was required in that area. Int. Exh. II-232.

Intervenor states that the precautions he took to conceal the fact that he was the source of the January 1990 dilution valve allegations were insufficient because he was the logical person to have submitted this information to NRC. Int. PF 33. Because Mr. Mosbaugh has demonstrated during this hearing that he is a very clever individual, the Board should not accept that he would take such extraordinary precautions to conceal his alleged status if it would have been so obvious to everyone that he was the source. It is more likely, consistent with Mr. Bockhold's testimony, that most people would believe the source was someone within the support staff ranks -- rather than a high-level manager, who would more likely have confronted this situation out in the open.

GPC believes that Mr. Mosbaugh's discomfort over submitting allegations may have colored his perceptions and caused him to misinterpret the statements or actions of others. It is clear that Mr. Mosbaugh was affected by his own actions -- as evidenced by the precautions he took in

submitting his allegations in January 1990 and his physical reactions when taking notes at the February 7, 1990 meeting. See Tr. 9414, 9431-34 (Mosbaugh).

ii. "Questions About the Source of the OI Investigation" (Int. PF 36-38).

Intervenor contends that Mr. Bockhold asked him on January 29, 1990 about the source of OI's presence on site and that this intensified his feelings of intimidation. Int. PF 36-38. Intervenor did not cite or discuss Mr. Bockhold's Rebuttal Testimony, at 4-5, which indicated that he did not confront Mr. Mosbaugh and further stated:

I did speak with a number of persons on my staff to try to understand what was being investigated. I learned from people that had been interviewed that there was probably an allegation that Skip Kitchens had opened a dilution valve. I did not know who had made such an allegation. There was some speculation that the OI investigation had been initiated by somebody within the NRC. I may have discussed such matters with Mr. Mosbaugh, but I did not in that time-frame think that Mr. Mosbaugh was involved with OI at all.

Also, as mentioned above, at Mr. Mosbaugh's Department of Labor hearing, Mr. Bockhold testified that, at the time they learned there would be an OI investigation, he believed that the allegation may have come from someone in the plant's Engineering Department. Int. Exh. II-233 at 691. Based on this testimony, it does not appear that Mr. Mosbaugh had a reasonable basis to conclude that Mr. Bockhold suspected him of being the alleger.

iii. "Professional Training in 'Yes, Sir'" (Int. PF 39-43).

Intervenor asserts that during a February 7, 1990 meeting concerning work force downsizing, Mr. Bockhold told him that "he [Mr. Bockhold] had professional training in the Navy in

saying "yes, sir" and "Al if you can't conform and accept then you need to get out." Int. PF 39 citing Mosbaugh at 9 and Mr. Mosbaugh's hand-written notes of the meeting (Int. Exh. II-134). Intervenor contends that he felt like this was an ultimatum that if he couldn't go along with management, then he needed to leave Georgia Power. Int. PF 40. Of course, Intervenor did not cite the evidence contrary to his position. With respect to the statements attributed to him, Mr. Bockhold testified:

I don't remember making such statements, particularly with respect to any allegations that had been made to the NRC, as Mr. Mosbaugh's testimony appears to suggest. I have reviewed the notes Mr. Mosbaugh prepared relating to the meeting at which he alleges that I made this statement. These notes indicate that it was a meeting on February 7, 1990 to discuss a Plant Vogtle reorganization and associated down-sizing. Periodically, I held meetings with all my managers to discuss personnel needs and requirements in every department. This meeting had nothing whatsoever to do with any allegation made to the NRC, any NRC inspection or investigation, or any safety concern.

Mr. Mosbaugh's notes indicate that I made the specific remarks which he attributes to me. While I do not remember making the remarks, I may well have made some such remarks in this context of organizational change. I did not enjoy discussing the elimination of jobs, but recognized that it was a business necessity -- as did my superiors -- as the Plant moved further away from the period of start-up and a large support staff to a smaller support organization. If Mr. Mosbaugh suggested that he didn't like the reorganization philosophy or particular eliminations, I may well have told him that he needed to learn to accept upper management's directions.

Bockhold Rebuttal at 5-6. Mr. Mosbaugh's notes reflect that the context of the statements by Bockhold, if correct, were unrelated to any allegation made to the NRC. The Board should not accept Mr. Mosbaugh's slanted view of this meeting.

Intervenor states that he "did not have enough information on April 19th to feel comfortable in challenging the directed resolution of the LER." Int. PF 42. This is untrue. Intervenor had the Webb list, if not before the end of the last call with Mr. Shipman, then within minutes of it. The Webb list was significant and he knew it at the time because he understood, at this point in time, that management intended to refer to a number of starts running through April 9, rather than through April 19. ASLB Tr. 5314-15, 5319; GPC PF 235-36; NRC PF 63.^{35/}

Intervenor concludes that Mr. Mosbaugh's "feelings of retaliation were valid," citing findings by the Secretary of Labor concerning events in August of 1990. Int. PF 43 n.17. Whatever happened in August 1990, it could not possibly have had a bearing on how Mr. Mosbaugh felt in February of 1990. Intervenor's PF 43 also states that it is reasonable to infer that Georgia Power management knew he was the source of the dilution valve allegation because, as Mr. Mosbaugh testified, Messrs. Bockhold and Kitchens had taken a unified defensive posture against him at an earlier meeting concerning the dilution valve issue. For the reasons stated above, such an inference is not reasonable. Finally, Intervenor states that Mr. Mosbaugh "acted appropriately in expressing his concerns in the face of pervasive intimidation," citing the Secretary of Labor's decisions in Hobby and Mosbaugh. Intervenor asserts that

Hobby is probative because the decision-makers involved in that case had executive authority over Plant Vogtle during the time directly related to this proceeding. As noted earlier, this decision has collateral estoppel effect upon the NRC's Licensing Board in all matters related to harassment and discrimination and the conclusions drawn by the Secretary of Labor in the Hobby decision are

^{35/} The NRC Findings also suggest that Mr. Mosbaugh did not know the final LER diesel starts statement was inaccurate. NRC PF 97-98. Our conclusion, which is different than NRC's, is based on two NRC Findings with which we do agree: (1) a finding that Mr. Mosbaugh knew Georgia Power intended to present a start count as of April 9 (see NRC PF 63), and (2) a finding that the Webb list clearly showed such a count was inaccurate (see NRC PF 96).

incorporated herein. Moreover, Georgia Power's contentions in this matter have been conclusively refuted by the findings of the Secretary of Labor in Hobby and in Mosbaugh v. Georgia Power.

This is nonsense. First, there are no matters of discrimination that are directly at issue in this proceeding, and the specific corporate decisions addressed in the Department of Labor proceedings are irrelevant to the early 1990 events. The decisions and decision makers involved in the Hobby situation had nothing to do with the dilution valve issue. And it is unreasonable to infer retaliatory animus on the part of Mr. Bockhold and Mr. Kitchens based on an unrelated decision made by different individuals in a different portion of the company. The October 1990 decision to discharge Mr. Mosbaugh is likewise irrelevant to the early events. The Hobby or Mosbaugh Department of Labor proceedings addressed different issues than this case. Further, as discussed above, the Secretary's Decision and Remand Order (Nov. 20, 1995) in Mosbaugh, which is not a final order, was based on inaccurate testimony from Mr. Mosbaugh, which is currently the subject of a Motion to Reopen the Mosbaugh DOL hearing record. For all these reasons, it is inappropriate for the Board in this case to consider the findings of the Secretary of Labor in either the Hobby or Mosbaugh DOL cases.

**D. "Attempt to Use SSPI Data to Demonstrate Diesel Generator Reliability"
(Int. PF 44-64).**

The factual disputes between Intervenor and Georgia Power relative to SSPI data are multiple. First, Intervenor contends that George Bockhold made the decision not to include two months of 1990 SSPI data in a table presented to the NRC IIT. Int. PF 62. Georgia Power contends that inadequate evidence exists that Mr. Bockhold affirmatively made such a decision; the taped conversation indicates that Mr. Williams informed Mr. Bockhold about the 1990 SSPI data

and the basis for Mr. Williams' omission of it. Second, Intervenor argues that the purpose in presenting the SSPI data, in context, was "to prove the Vogtle diesels were reliable." Int. PF 62. In the following discussion, Georgia Power places the SSPI data in context, including a consideration of the balance of the document surrounding the table and of contemporaneous transcribed conversations. The fact is that on April 2 Georgia Power not only acknowledged lack of reliability of the Calcon sensors, but also had previously informed the NRC of the two diesel 2A failures in early 1990 which adversely affected the SSPI data for 1990. Third, Intervenor argues that the NRC had a heightened interest in "all information provided regarding diesel reliability," that the SSPI data was the only data given to the NRC before April 9 and, therefore, the omission evidences an attempt of Georgia Power to "paint a rosy picture to ensure that restart was granted." Int. PF 63. Georgia Power disagrees. The NRC was more concerned with specific problems experienced by the diesels in 1990, not broad industry indicators. The NRC also had other reliability-related data which painted a far from rosy picture.

It is clear from the transcript of the conversation between Messrs. Mosbaugh, Aufdenkampe and Williams that by April 4, 1990 (Int. Exh. II-94; Exh. II-94A) Mr. Williams had already had his conversation with Mr. Bockhold about the SSPI data.^{36/} The transcript also establishes that Mr. Williams' discussion with Mr. Bockhold occurred on April 1 (GPC PF 428; Int. PF 59.) A determination of whose decision it was to omit 1990 data based on the April 4 transcript is problematic. In the April 4th conversation, Mr. Aufdenkampe asked Mr. Williams where Mr. Bockhold got the data. Mr. Williams responded "From me. I gave it to him. That's what I gave him." Int. Exh. II-94A, pg. 1, ll. 26-27; Int. Exh. II-94B, pg. 1, ll. 28-29. Thus, the transcript does

^{36/} Int. PF 58 incorrectly states that the discussion was between Aufdenkampe, Bockhold and Williams.

not establish that Mr. Bockhold directed Mr. Williams to exclude the 1990 numbers. Mr. Bockhold simply appears to have been told by Mr. Williams that the 1990 numbers had been excluded. Int. Exh. II-94A at 6, ll. 4-6; Int. Exh. II-94B at 6, ll. 5-7.

The "diesel reliability" portion of IIT Document No. 143 (Int. Exh. II-89) compared the Vogtle diesel reliability to the reliability of the nuclear industry. Each Vogtle Unit SSPI is listed and implicitly compared to U.S. averages, medians, and "sister" plant SSPI data. *Id.* The 1990 SSPI values, if included, would have been without comparisons, and covered only a limited, two month duration. This was obviously a logical basis on which to omit the data. The Staff agrees. NRC PF 176.

Moreover, Intervenor's argument that the "ultimate reason" for the comparison was to prove the Vogtle diesels were reliable, takes the SSPI data of IIT 143 out of context. The document contains "key lessons learned" which include a future review of calibration procedures to assure that "switch performance is reliable," and a suggested bypass of "nonessential engine trips to improve overall reliability." Int. Exh. II-89 at 1. Georgia Power also identified the perceived "root cause" of the 1A diesel shutdown during the SAE as "a combination of an intermittent failure of a jacket water temperature switch and/or inconsistent calibration techniques of the switches during [Vogtle unit] 1R [refueling outage] 2." Int. Exh. II-89, at 1. In addition, the balance of IIT 143 shows repetitive problems with various types of sensors, including high jacket water temperature switch problems on March 24, 1990 (diesel 1B), March 29, 1990 (diesel 1A) and March 31, 1990 (diesel 1A). Int. Exh. II-89, at 4. Thus, in context, IIT 143 actually demonstrated that sensor reliability and, therefore, diesel reliability, was still in question. As George Bockhold

observed to the NRC at the meeting on April 2 in which IIT 143 was discussed, "we need to determine what the problem is with the switches." GPC Exh. II-66 at 43.

A review of the transcript of the meeting at which IIT 143 was presented to the NRC greatly assists the Board in understanding the context of IIT 143 and the SSPI data. GPC Exh. II-66. At the beginning of the meeting Mr. Bockhold stated that he viewed the "key lesson learned" in IIT 143 as a determination of the best methodology for calibration; the Calcon vendor was on his way to Vogtle. Georgia Power and the Calcon vendor would look at switch reliability as part of the ongoing review. GPC Exh. II-66 at 3. Mr. Bockhold then suggested that the NRC ask specific questions about the document. Id. After posing questions concerning operator training and the likely root cause of the various 1A trips on March 20, Mr. Chaffee turned to the reliability of the jacket water temperature sensors. GPC Exh. II-66 at 14. Mr. Chaffee stated "I'm getting the impression that the jacket water temperature sensors are not that reliable." Id. at 17. More significantly, Mr. Chaffee indicates that he is specifically aware that on Unit 2 "recently" the diesel tripped during monthly surveillances. Id. at 18. These Unit 2 starts, Mr. Stokes explains, were unrelated to the high jacket water temperature problem thought to have occurred on diesel 1A. Id. at 19.^{32/} Thus, the IIT was aware of the two 2A diesel failures to start associated with an inadequate air roll. These start failures resulted in 353.53 estimated unavailable hours of out-of-service time and "bad" SSPI values for January-February, 1990. GPC Exh. II-140 at 3, ¶ 5, and Aufdenkampe Exh. Q, pp. 9-10. See, also, GPC PF 430 (i.e., that the specific problems experienced by the diesel in early 1990 were more informative than SSPI data.)

^{32/} In GPC Exh. II-66, Mr. Stokes referred to his interview with the IIT in which he told Mr. Chaffee about two starts on one of the Unit 2 diesels (diesel 2A) where the engine "just rolled slowly and did not start." The interview was conducted on March 28, 1990, several days before the April 2 meeting. Board Exh. 5 at 1-2.

Intervenor contends that the SSPI data "was the only data given to the NRC" prior to the April 9 presentation. Int. PF 63. This is totally ludicrous. As the foregoing discussion of the April 2 GPC/IIT meeting illustrates, the NRC had substantially more data concerning the diesel reliability prior to April 9 than merely IIT 143. By April 9, the NRC also possessed the "Kochery list" showing specific 1A and 1B starts and failures (GPC Exh. II-8), and at least three other sources of information on diesel engine sensor performance. (See GPC Exh. II-179 at 2-3: the IIT had notes from a GPC presentation; the April 3, 1990 memorandum from Briney to Bockhold (GPC Exh. II-76); and representative sensor history on the quarantined sensors which had failed after the Site Area Emergency.) In addition, the NRC representative had observed activities at the plant as testing was in progress. In sum, Intervenor has developed an allegation extrapolating from a discussion between Georgia Power employees without considering the equally important discussions and communications between the NRC and Georgia Power.

Intervenor does not contest Georgia Power's PF 433 (i.e., that Mr. Bockhold believed Georgia Power was providing the relevant information in IIT 143 because the focus of inquiry had by then become centered on the 1A diesel and sensor failure problems). This is confirmed by reviewing IIT 143 in conjunction with the April 2nd transcribed discussions. Furthermore, Intervenor does not address why on April 3 he did not suggest that Mr. Bockhold include the 1990 SSPI data when he was unaware that IIT 143 had been previously provided to the NRC. (GPC PF 437 and 440).

Finally, the SSPI data for two months of 1990 was not significant to the NRC with respect to diesel operability or effectiveness of corrective actions. The SSPI information was unnecessary

for the NRC's decision on restart. NRC PF 176. In response to questions from Judge Carpenter, Mr. Mosbaugh conceded that the NRC uses a TechSpec/surveillance test basis to look at numerical values of reliability. Tr. 10371 (Mosbaugh); See, also, NRC PF 172-175. Intervenor also conceded that during the relevant period of time, the NRC had access to all the pertinent records (presumably including the Diesel Start Log with January and February start failures) and received relevant documentation which they asked for. Tr. 10405-6 (Mosbaugh). Accordingly, the omitted 1990 data did not have the capability to influence the NRC, particularly when the 2A diesel problems which drove the SSPI values for 1990 were known to the NRC.

E. "April 2, 1990 IIT Discussion" (Int. PF 65-73)

Intervenor states that in a discussion with the IIT on April 2, attended by Mr. Bockhold, Mr. Stokes stated that there were possibly eight successful starts and tended to agree with Mr. OwYoung's statement that there were approximately six starts. Int. PF 66-67. Intervenor's characterization of these statements is incomplete and inaccurate. The statements concerning six or eight starts referred to the number of starts of the 1A diesel witnessed by the Cooper representatives, and not to a complete number of starts. See GPC PF 109 n.23. Both Mr. Stokes and Mr. OwYoung stated during the discussion that there had been anywhere from a dozen to fourteen or fifteen starts after replacement of the sensors on the 1A diesel. Further, there was no discussion of the number of 1B starts. See GPC PF 109.

Intervenor proceeds to discuss Mr. Stokes' knowledge of the number of starts between April 2 and April 9 to suggest that Mr. Stokes would have realized that there could not have been nine starts in this interval. Int. PF 68-71. This discussion is irrelevant because Mr. Stokes was

not involved in preparing the diesel testing transparency or discussing it with Mr. Bockhold. Further, based on the references to start numbers ranging from 12 to 15 during the discussion with the IIT on April 2, the reference to 18 successful starts of the 1A diesel would not have appeared unreasonable when the transparency was later prepared.

Intervenor states that the April 2 discussion with the IIT establishes an NRC expectation of the basis to begin counting -- after the switches were replaced. Int. PF 72. Georgia Power is not certain what the "NRC's expectation" was, but agrees that this discussion may have influenced Mr. Bockhold. See GPC PF 49. Mr. Bockhold believed that the count presented in the diesel testing transparency represented the number of starts after sensor calibration and logic testing. See GPC PF 64.

Intervenor also states that the discussion establishes that Bockhold and GPC personnel had no difficulty accurately answering an impromptu question about successful starts, from memory alone, within seconds. Int. PF 72. This assertion overstates the precision and certainty of Georgia Power's response on April 2. It is clear from the transcript of that meeting that even the diesel experts (Stokes and OwYoung) were not certain of the exact number of successful starts from memory alone, and neither Mr. Stokes nor Mr. OwYoung were involved in preparing the diesel testing transparency.

Finally, Intervenor asserts that the April 2 discussion establishes that Bockhold had information available to him that demonstrated that the maximum start count he could claim on April 9, 1990 for DG1A was 12. This assertion makes no sense. As already discussed, Mr. Bockhold heard during the April 2 discussion with the IIT that there might have been as many as fifteen

successful starts after switch replacement. See GPC PF 109. In addition, there had in fact been more than 18 successful consecutive starts of the 1A diesel as of April 9. See GPC PF 54 n.4. It was the start count for the 1B diesel that was overstated on April 9, and the number of successful starts of the 1B diesel was not discussed during the April 2 IIT meeting.

F. "Prior Knowledge of Diesel Failures" (Int. PF 74-84)

In Int. PF 74-76, Intervenor points out that the reports of certain problem starts of the diesel were contemporaneously communicated to individuals in the corporate office. He then asserts that the knowledge of these problems gave Messrs. McCoy and Hairston the ability to determine that the COA response letter diesel start statement was inaccurate. Int. PF 77. This information, however, would not have alerted anybody that the number of successful starts reported on April 9 was incorrect. GPC PF 112-13. Georgia Power agrees that this information was sufficient to alert the corporate office that there had been some diesel problems after March 20, and that individuals who read the April 9 letter as implying that there had been no such problems or failures could have recognized that this implication was inaccurate. There is no evidence, however, that anybody -- including Mr. Mosbaugh -- read and interpreted the letter in this manner when it was issued. See GPC PF 78, 115.

In Int. PF 38, Intervenor states that GPC personnel had the successful start count in mind when preparing the April 9 presentation, understood the meaning of successful starts, and Mr. Bockhold knew that the maximum start count he could claim on April 9 was 12. This statement is unfounded for the reasons stated in section V.E, above.^{38/}

^{38/} In Int. PF 78, Intervenor cites Int. Exh. II-45, which was Mr. Mosbaugh's initial effort to transcribe a short

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Intervenor then argues that "Georgia Power's knowledge of diesel failures is demonstrated by the conflict in testimony between Messrs. Stringfellow and Mr. Bockhold." Int. PF. 79. As discussed below, this argument is remarkably contrived. Intervenor first refers to Mr. Stringfellow's belief that Mr. Bockhold would have been aware of the diesel failures on April 19. Int. PF 79-81. He then states:

However, Mr. Bockhold stated that when he was participating in the April 19 the call, it was indicated to him that there were plenty of starts. He was not aware of any problems. Tr. 3499 (Bockhold).

Int. PF 82. The second sentence quoted above from Intervenor's proposed finding 82 does not appear at the cited page or, as far as Georgia Power is aware, anywhere else. Intervenor has simply fabricated that addition. Mr. Bockhold has in fact testified that he was aware that there had been problem starts but believed that they occurred prior to the starting point of the count. GPC PF 64-65, 69. Therefore, there is no inconsistency between Mr. Stringfellow's belief and Mr. Bockhold's testimony.

Intervenor refers to Mr. Bockhold's testimony that he does not remember anybody questioning the accuracy of the April 9 letter before the term comprehensive test program was introduced in the LER on April 19. Int. PF 83, citing Tr. 3500 (Bockhold). Intervenor then asserts, without a single citation, that "[t]he evidence shows that Mr. Bockhold knew the April 9th numbers were suspect on April 19, 1990, yet he allowed the LER to be sent out with inaccuracies."

Int. PF 84. There is no support for this assertion. Indeed, in all the conversations that Mr.

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segment of the recording of the April 2 meeting with the IIT. Mr. Mosbaugh's exhibit attributes to Mr. Holmes the statement referring to six starts. The complete transcript (prepared by the IIT) indicates that the statement is made by Mr. OwYoung. GPC Exh. II-77 at 47; Bd. Exh. II-2.

Mosbaugh recorded on April 19, there is not one where Mr. Mosbaugh informs Mr. Bockhold, his immediate superior, of any concerns. See generally GPC Exh. II-1, II-2. The transcripts of tapes 57 and 58 show that Mr. Mosbaugh never picked up the telephone or walked into Mr. Bockhold's office to let Mr. Bockhold know what was being considered and discussed.

G. "Georgia Power Prepares to Request Restart from NRC" (Int. PF 85-89)

In this section, Intervenor makes the claim that the typed Cash list was a slide that was "pulled" from the final presentation. See Int. PF 89. This abject speculation is addressed by GPC PF 100-06.

Intervenor states that the normal practice for making a presentation includes a "dry-run" of the presentation, and also that the final decision as to what would be presented would be made by Corporate management. Int. PF 86, citing Mosbaugh at 43-44. Neither of these assertions is supported by Mr. Mosbaugh's testimony.

Intervenor mentions that there was a telephone call scheduled for April 8 to review the draft of the COA response letter. Int. PF 87. Intervenor describes this as a "high level" discussion, but this is merely his aggrandizing description. Mr. Hairston, for example, was not a participant. In any event, there is no indication that any slides were reviewed or discussed during this call.

Intervenor also refers to Mr. Hairston's testimony that they thumbed through the slides prior to the presentation. Int. PF 88. Intervenor then asserts that "[i]t is apparent from this [that] Hairston knew or should have known that the Cash slides existed but were not used in the

presentation." Id. This bald assertion presupposes that the Cash list was a slide provided to Mr. Hairston. There is absolutely no support for this supposition.

Finally, Intervenor states, vaguely, the circumstances surrounding their development demonstrate that the Cash lists were prepared for the presentation. Intervenor then argues that he "presented the position that the slides of the Cash lists were pulled from the final presentation" and asks the Board to find that Georgia Power has not presented sufficient evidence to rebut the assertion. Int. PF 89. This argument is absurd. In the first place, Intervenor offers only rank speculation for his "position," unsupported by personal knowledge or direct evidence. The suggestion that such speculation -- in effect the presentation of a "position" -- requires Georgia Power to prove a negative is frivolous. In any event, there is direct testimony by a number of individuals that the Cash lists were not slides and were not prepared as such. GPC PF 102-04. The lists are not even in the same format as the transparencies. GPC PF 104.

H. "Diesel Start Counts Prior to April 9 Presentation" (Int. PF 90-99)

Intervenor states that by April 9, Mr. Kendall 'did not have a solid factual basis to render an opinion as to whether the diesel generators should be considered operable.' Int. PF 91. Mr. Kendall testified, however, that he was not involved in the restart decision and was not asked to assess the operability of the diesels. Tr. 5033-34 (Kendall). Since he was not assessing the operability of the diesels, the fact that he had not developed a basis to make an operability determination is entirely irrelevant.

Intervenor proposes a finding that Mr. Chaffee and Mr. Kendall were concerned about the number of starts. Int. PF 95-96. The IIT's was concerned that it had a complete list of all the

starts, not on determining the number of successful starts in a row. See Tr. 5050, 5053, 5060 (Kendall). There is no indication in the record that the specific number of successful starts had any significance to the IIT.

Intervenor refers to Mr. Kendall's request that Mr. Stokes call him to discuss the starts and Mr. Kendall's inability to recall whether the NRC ever received a complete list. Int. PF 98-99. This subject is addressed by GPC PF 127-28. Intervenor concludes that it is "unthinkable that Georgia Power did not ensure the NRC received the information it requested." Int. PF 99. This conclusion is inappropriate for several reasons. First, there is no record of what Mr. Kendall subsequently asked Mr. Stokes or what information Mr. Stokes may have provided in response. It may be that Mr. Stokes adequately responded to Mr. Kendall. Nor is there any indication in the record that the IIT was unsatisfied by the list that was provided on May 9, 1990 (GPC Exh. II-10). Indeed, Mr. Kendall indicated generally that he did not have any problem getting answers from Georgia Power personnel. Tr. 5055 (Kendall); Kendall at 4. Further, Appendix J of the IIT Report (NUREG-1410) certainly reflects an extensive knowledge by the IIT of the specific starts and tests of the diesel. See generally GPC Exh. II-167. In the absence of any complaint from the IIT, and indeed in light of the NRC's recognition of Georgia Power's responsiveness to the IIT (GPC Exh. II-17 at 2), it is inappropriate to make negative inferences based on the inability of individuals to recall how the IIT's question was resolved over five years ago.

I. "The 'Cash List'" (Int. PF 100-121)

Intervenor states, in conclusory fashion, that "[c]onvincing evidence is found in the Cash list that Georgia Power willfully made false diesel start statements to the NRC" in the April 9

presentation and letter. Int. PF 100. He asserts (again without support) that the list was prepared for the presentation and contained all the information needed to know that the presentation was inaccurate. Id. Intervenor therefore states that it is "no wonder that Georgia Power and the personnel who knew about it failed to reveal its existence time after time when there were clear and logical opportunities to do so." Int. PF 101.

This subject matter is addressed extensively in GPC PF 57-67, 81-106. As discussed in these findings and as discussed further below, Intervenor presupposes that the Cash list was a slide that was distributed and known about. This supposition is sheer speculation unsupported by any evidence. Even Mr. Bockhold did not know of the typed list. See GPC PF 103. The lack of evidence supporting Intervenor's theory becomes very evident when one examines Intervenor's proposed findings, which are replete with inaccurate and unsupported representations.

i. "Initial Preparation" (Int. PF 102-06)

Intervenor commences its findings on the Cash list by stating, "Jimmy Paul Cash researched and wrote a detailed list of DG starts at the request of Mr. Bockhold." Int. PF 103. Intervenor offers no citation for this assertion, which is unsupported by the record. There is no evidence that Mr. Bockhold ever asked Mr. Cash for, or instructed him to prepare, a list. In fact, to the contrary, Mr. Cash testified that Mr. Bockhold did not ask him to prepare a table. Tr. 4425 (Cash). Intervenor then asserts that "[t]his list was prepared on April 8, 1990." Int. PF 103. Intervenor again offers no citation for his assertion, which is belied by the weight of the evidence. See GPC PF 83-98.

Intervenor next asserts that "Mr. Cash met with Mr. Bockhold and gave him the start count list." Int. PF 103. Intervenor quotes Mr. Cash's statement to the OSI that "he turned the data over to Mr. Bockhold" (Int. Exh. II-131 at 5), but it is not at all clear what "turned the data over" means. Mr. Cash could well have been referring to his having provided the totals to Mr. Bockhold. Further, Intervenor makes no mention of the direct testimony in this case that Mr. Cash just gave Mr. Bockhold the numbers. See GPC PF 63 and n.10. Nor does Intervenor make any mention of the best evidence -- Mr. Cash's most contemporaneous statement to Mr. Aufdenkampe on April 19, 1990 -- that Mr. Cash just gave Mr. Bockhold totals. Id.

Again without citation or support, Intervenor intimates that Mr. Cash thought Gloria Walker typed his list. Int. PF 103. Mr. Cash never testified that Ms. Walker typed his list. Mr. Cash does not even remember the list being typed. GPC PF 67. Rather, Mr. Cash remembers helping Ms Walker with the format of the slides (GPC PF 87) and indeed Ms. Walker did begin the work on the slides (GPC PF 90).

In Int. PF 104, Intervenor refers to the parenthetical numbers above the line on the diesel testing transparency and refers to Mr. Cash's testimony that he believes that the numbers in parentheses add up to 18 and 19. Intervenor states that many questions arise from this fact. Int. PF 104. Although Intervenor's questions are cryptic, Intervenor may be suggesting that the numbers at the bottom of the transparency (i.e., the numbers below the line at the bottom) were derived by adding up the parenthetical numbers above the line -- numbers that were provided by somebody other than Mr. Cash.^{32/} This suggestion is dubious for several reasons. First, there is conflicting

^{32/} Georgia Power believes that the information above the line on the diesel testing transparency was provided by

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testimony concerning whether the numbers add up. Tr. 2867 (McCoy); Tr. 3808 (Bockhold); Tr. 4467 (Cash); Tr. 12972 (Eckert). Second, even if the numbers do add up and are assumed to be related, it does not follow that the numbers at the bottom of the transparency were derived by adding up the numbers in parentheses. If these two sets of numbers are related, it is in fact more likely that somebody unfamiliar with the diesel testing program adjusted the numbers above the line -- specifically, the parenthetical numbers after the "Multiple Starts" entry -- so that they added up to the totals at the bottom.⁴⁰

Intervenor states that Mr. Cash was not the source of the 18 and 19 start numbers -- that those numbers had been formulated by Georgia Power and incorporated into a draft letter before Mr. Cash even started his count. Int. PF 105. Intervenor offers neither a single citation to support this assertion nor any meaningful discussion of the evidence. For a meaningful discussion of the evidence, which indicates that Mr. Cash did provide these numbers, see GPC PF 83-98. The fact that the 18 and 19 start numbers appear in a draft of the COA response letter that was

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Mr. Burr. GPC PF 56. Intervenor asserts that Mr. Burr denies having any part in the preparation of the overhead. Int. PF 104 n.21. This assertion is inaccurate. Mr. Burr testified in this proceeding that he provided to Mr. Bockhold the sequence of the diesel testing. See GPC PF 56. The paragraphs from the OI report cited by Intervenor reflect Mr. Burr's testimony to OI that he did not develop the "data" on the transparency. Georgia Power believes that Mr. Burr's reference to the "data" meant the start numbers at the bottom of the transparency.

Intervenor adds that this is yet another instance demonstrating that Georgia Power never got to the bottom of the issue as to where the 18 and 19 start numbers came from. Intervenor is merely exploiting the fading of memories after more than five years. There was no question in 1990, even in Mr. Mosbaugh's mind, that Mr. Cash was the source of the "18 and 19" numbers at the bottom of the diesel testing transparency. See GPC PF 97, 129. See also GPC Exh. II-40 at 5, 10; GPC Exh. II-42 at 7; GPC Exh. II-44 at 4-5, 18.

⁴⁰ "Multiple starts" referred to a specific type of testing (see GPC II-167 (NUREG-1410, App. J) at J-15), but somebody may have construed this entry as a reference to other miscellaneous starts. Indeed, the Multiple Start Test involved four sets of starts and stops, not fourteen as indicated on the diesel testing transparency for the 1B diesel. Compare GPC Exh. II-167 at J-15 with GPC Exh. II-21. It is possible that Mr. Cash, believing that the numbers above and below the line should add up, made a change to the Multiple Starts entries when he assisted Gloria Walker with the format of the diesel testing transparency (see OI Exh. 9 at 5, admitted at Tr. 4451).

telecopied in the morning of April 7 (Int. Exh. II-40) does not signify that somebody other than Mr. Cash provided these numbers, but rather merely that Mr. Cash must have performed his initial count before Saturday morning, as the weight of the evidence strongly indicates.

In Int. PF 106, Intervenor refers to Ms. Dixon's testimony that the 18 and 19 successful starts were below the line on the bottom of a handwritten draft of the diesel testing transparency before she began typing at about 4:00 p.m. on April 6. Although Intervenor's reference to the time is an embellishment (see Tr. 8167), Georgia Power does not understand how this testimony supports Intervenor's theory. The numbers were on the bottom of a handwritten draft of the transparency on the afternoon of April 6 because Mr. Cash had provided those numbers orally to Mr. Bockhold. The fact that the typed Cash list was generated after the diesel testing transparency reflects the fact that Mr. Cash used a handwritten list to come up with the numbers reported to Mr. Bockhold, and had his list typed (and probably updated) later. See GPC PF 63, 93.

Intervenor asserts that the typed Cash lists were "the last two documents in the series of documents that became Bockhold's slide presentation to the NRC on April 9, 1990." Int. PF 106. Other than Intervenor's unsupported speculation, there is no evidence in the record that the typed Cash list was part of Mr. Bockhold's slide presentation. See GPC PF 100-06.

ii. "Bockhold's [Alleged] Knowledge of the Existence of the Cash List" (Int. PF 107 - 111)

Based on the assumption that Mr. Cash provided to Mr. Bockhold a diesel start count greater than the numbers at the bottom of the diesel testing transparency (i.e., 27 and 23, rather than 18 and 19), Intervenor posits that Mr. Bockhold would have questioned Mr. Cash on the

details of his start count and would have looked at Mr. Cash's handwritten list. Int. PF 107. The assumption upon which this speculation is based is unfounded. Mr. Cash does not recall whether his typed list was the same as his handwritten list (he may have added additional starts to his list); nor does he remember the starting point of his count. Therefore, the fact that a higher count can now be derived from his typed list is not probative. GPC PF 96. Moreover, Intervenor's speculation is inconsistent with the testimony of both Mr. Bockhold and Mr. Cash. See GPC PF 63.

Intervenor again refers to Mr. Cash's OSI testimony for the proposition that Mr. Cash gave Mr. Bockhold both the numbers and the list. Int. PF 108. As noted earlier, this position is inconsistent with the weight of the evidence and, in particular, Mr. Cash's statement on April 19, 1990 that he just gave totals to Mr. Bockhold. See GPC PF 63 and n.10. It is also very doubtful that Mr. Cash would have given "his boss's boss's boss," the Plant General Manager, the crumpled up paper he had been carrying around in his pocket. Tr. 3491 (Bockhold); Tr. 4456 (Cash); Tr. 12958 (Eckert). Moreover, if Mr. Cash had given Mr. Bockhold the list, how could Ester Dixon have later typed it up? Intervenor states that it is likely that Mr. Cash provided a copy of his handwritten list to Mr. Bockhold, but Mr. Cash has no recollection of copying the list. Tr. 4454 (Cash).

Intervenor states that after he brought his diesel count information to Mr. Bockhold, "Mr. Cash worked with Ms. Dixon for several hours just outside Mr. Bockhold's office door." Int. PF 109, citing Tr. 8114 (Dixon). Again, Intervenor takes liberties with the record. The cited portion of Ms. Dixon's testimony makes no mention of her proximity to Mr. Bockhold's office or to working with Mr. Cash for "several hours." Intervenor then states that "Ms. Dixon estimated that it

took about one and a half hours to type the start list for just one diesel." Int. PF 109. This too appears inaccurate. As previously discussed, Ms. Dixon testified that she spent an hour and a half on Mr. Cash's documents. Tr. 8130 (Dixon).

Intervenor concludes that it is "unlikely that Mr. Cash would have made a typing assignment and tied up Mr. Bockhold's secretary in this manner. . . ." Again, there is no support for this opinion anywhere in the record. Intervenor did not ask Mr. Cash, Ms. Dixon, or Mr. Bockhold whether Ms. Dixon's typing of the list was inappropriate. Further, there is no indication that Mr. Cash "tied up" Ms. Dixon. From the sequence of the computer files, it appears Ms. Dixon started typing Mr. Cash's list only after the presentation slides were formatted and typed.

Intervenor asks why, if Mr. Cash, having used his handwritten list, had already given the start count to Mr. Bockhold, would Mr. Cash ask Ms. Dixon to type the list. Int. PF 110. Since, as Mr. Bockhold testified, Mr. Cash was in the process of checking his numbers further (see GPC PF 93), it does not seem at all unusual that Mr. Cash might have decided to have his list typed while he checked the information.

Finally, Intervenor states that Mr. Cash's numerous phone calls for additional start information show that Mr. Cash's list had another use and that Mr. Cash was calling various personnel trying to get information to address Mr. Bockhold's comments. Int. FF 111. There is no evidence that Mr. Bockhold gave Mr. Cash any comments.

iii. "Comparison of the Cash List with The Unit Control Log" (Int. PF 112-21)

Intervenor then launches into a comparison of the typed Cash list with the Unit Control log to suggest that the Cash list was prepared as a slide. Int. PF 112-121. The discussion is remarkable in that, in nearly five pages of findings, there is only one citation to testimony (Mr. Cash's testimony that he used the Unit Control Log to prepare his list). See Int. PF 112. In short, these findings are unsupported by any evidence.

At the outset, Intervenor asserts that "Mr. Cash testified that he used the Unit Control Log to prepare his list. Int. PF 4415. This is incomplete and misleading, because Mr. Cash testified that he used two logs (the Unit Control Log and the Shift Supervisor's Log). Tr. 4415 (Cash). Intervenor then observes that the typed list contains some information not found in the Unit Control log. Int. PF 112, 114-118. Since Mr. Cash used the Shift Supervisor's log which is as well, and the Shift Supervisor's log is not in evidence, this observation is meaningless. However, even if one assumes that the additional information is not found even in the Shift Supervisor's log, Intervenor's observation would do no more than support Georgia Power's belief that the typed list is different from the handwritten one that Mr. Cash used when he reported the start count to Mr. Bockhold. See GPC PF 93.

Intervenor notes that the typed Cash list begins in February, rather than March. Int. PF 113. Intervenor then suggests that if the Cash list were being formatted as a presentation slide, this additional information would have been of considerable interest to show the initial conditions and recent history of the diesel starts immediately before the SAE. Id. This speculation is unsupported and unpersuasive for a number of reasons. The initial conditions and recent history of the

diesels before the site area emergency was not information that the NRC requested be addressed at the presentation (see GPC PF 48), and there is no evidence that this information "would have been of considerable interest" as Intervenor asserts. Second, there is no indication in any of the transparencies that presentation of pre-event data was contemplated. See Int. Exh. II-71. Third, there are plausible explanations why the typed Cash list has additional information. For example, Mr. Bockhold testified that he chose Mr. Cash to perform the count because Mr. Cash had previously reviewed the control room logs to obtain diesel generator start information for the Event Critique Team. GPC PF 57. If Mr. Cash had previously listed starts for the Event Critique Team, he might well have used the same list as a starting point in developing the count for Mr. Bockhold, or he may have decided to have Ms. Dixon type up all of the information he had collected. Since there are other plausible explanations and Intervenor chose not to explore this matter with any witness, it would be inappropriate to accept Intervenor's speculative inference.

Intervenor makes similar inferences from additional comments on the typed Cash list (comments that appear not to have been derived from the Unit Control log). Int. PF 114-118. Intervenor argues that his additional information was unrelated to a start count. Again, if the typed Cash list includes information that Mr. Cash had previously collected for the Critique Team (indeed, almost all of the additional comments relate to the events of March 20), the presence of the additional comments would not be surprising.

Intervenor also refers to a couple of items on the Cash list where the comments differ from the Unit Control log entries. Int. PF 119-20. None of these differences suggest that the Cash list was prepared as, or intended to be, a transparency.

J. "April 9 Presentation" (Int. PF 122-59)

Intervenor states in a footnote that it is inconceivable that neither Mr. Stokes nor Messrs. Kochery, Horton and Mosbaugh had any involvement in preparing or reviewing the presentation materials and April 9 letter. Int. PF 122 n.22. In fact, it appears that a draft of the COA response letter was distributed to Mr. Mosbaugh and Mr. Horton on April 5. See Int. Exh. II-126; GPC PF 117. Because of the weekend, the opportunity for further review may have been limited. The transparencies were prepared late on Friday (April 6), and the diesel start statement had been incorporated into a draft of the response letter by Saturday morning (April 7). See Int. Exh. II-40. Mr. Bockhold's telephone call to Mr. Aufdenkampe, which Mr. Aufdenkampe believes occurred late on Friday, may also have been an unsuccessful attempt by Mr. Bockhold to obtain somebody from Mr. Mosbaugh's group to help prepare or review the presentation materials, or even double check Mr. Cash's work.

Citing Tr. 3612 (Hairston), Intervenor states that Georgia Power admits that one of the transparencies was materially misleading. Int. PF 123. While Georgia Power admits that the diesel testing transparency was inaccurate (GPC PF 54), the testimony cited by Intervenor refers only to the April 9 letter and does not use the word "misleading." According to Intervenor, the transparency implies that "once the diesels were declared operable" there were 18 and 19 successful starts. Int. PF 123. There is no support for this characterization. The diesel testing transparency contains no suggestion that the 18 and 19 starts occurred after the diesel was declared operable. In fact, the transparency identifies the declaration of operability as occurring near the end of the test sequence for each diesel. See GPC Exh. II-21. Nor is there testimony that anybody, including the NRC Staff, interpreted the transparency as reporting successful starts after operability.

Intervenor states that when, at the April 9 presentation, Mr. Matthews asked Mr. Bockhold if he could draw a comparison between the "successful start" terminology and Reg. Guide 1.108 terminology, Mr. Bockhold responded that they had not counted the starts that way and "never provided an explanation about how [they] counted the starts identified in the transparency." Int. PF 124, citing Tr. 14792 (Matthews). Mr. Matthews' testimony does not support the quoted statement. Mr. Matthews merely testified that after Mr. Bockhold responded that the starts had not been counted using the Regulatory Guide terminology, there was no further questioning by Mr. Matthews or response by Mr. Bockhold. It is in fact probable that Mr. Bockhold provided some explanation of the numbers before Mr. Matthews asked his question, because Mr. Matthews correctly understood from the presentation that Georgia Power had not used the Regulatory Guide terminology in performing the count.

In Int. PF 125, Intervenor states that after the presentation, Mr. Cash raised a concern about "the NRC's interpretation of the diesel testing slide" and "based on his observation" Mr. Cash "felt [the] NRC could be confused that the transparency was referring to 'valid successful tests.'" Intervenor overstates Mr. Cash's testimony, which made no reference to the "NRC's interpretation." Rather, Mr. Cash just wanted to make sure that people did not think that his count had used Regulatory Guide terminology. Tr. 4392, 4421 (Cash). Mr. Cash's testimony provides no indication that he observed any misinterpretation by the NRC. In fact, he does not remember what caused him to have that concern. Moreover, Mr. Matthews' question (which may well have prompted Mr. Cash's remark to Mr. Bockhold after the meeting) shows that the NRC did not misinterpret the reference to successful starts and correctly understood that Georgia Power was not using Regulatory Guide terminology. See GPC PF 74.

Intervenor states unequivocally that Mr. Cash gave the original "Cash list" to Mr. Burr after the presentation. Int. PF 126. This is hardly a balanced finding discussing all of the evidence. Mr. Burr does not recall ever seeing the list, and Mr. Cash expressed a good deal of uncertainty on this point. GPC PF 107; Tr. 4480 (Cash). While it is possible that Mr. Cash gave his list to Mr. Burr, this possibility is not established by a preponderance of the evidence.

i. "Statements Made During Presentation" (Int. PF 127-29)

Int. PF 127-28 are redundant of Int. PF 90-91, 95 and are misleading for the same reasons. See discussion on page 27 above.

Citing the OI report, Intervenor represents that if NRC knew that the April 9 presentation contained a material false statement concerning the number of successful starts, NRC would not have authorized restart. Int. PF 129. This representation mischaracterizes the OI finding cited by Intervenor. That OI finding recounts Mr. Ebnetter's statement that if he had known that Mr. Bockhold deliberately omitted any failures or problems from the test data, he would not have permitted restart until he had determined Mr. Bockhold's rationale for the omission. Int. II-39 at 31 (¶ 110).⁴¹ Thus, the NRC staff did not state, as Intervenor represents, that it would have denied restart if it knew that the presentation contained a material false statement, but rather stated that it would have required a prior explanation if it thought Mr. Bockhold had deliberately omitted information. In fact, in response to a specific question from Intervenor whether knowledge of a material false statement in the presentation would have given the NRC pause with respect to restart,

⁴¹ Georgia Power does not believe that this particular OI finding was even introduced into evidence. It is not one of the findings that was the subject of Intervenor's August 11, 1995 motion. See Intervenor's Motion to Admit Certain Admissions and Sections of the OI Report into Evidence (Aug. 11, 1995).

Mr. Reyes replied no. Tr. 15308-12 (Reyes). Intervenor conveniently makes no mention of this testimony but instead distorts the meaning of a prior OI finding to suit his purpose. Moreover, when the NRC learned from Georgia Power that the start count was incorrect, it revisited the restart decision and determined that it was unaffected by the new information. Tr. 15319-20, 15329-43 (Reyes).

ii. **"Preparation and Content of the April 9 Letter"**

(a) **"April 7 COA Response Letter Draft Contains 18 and 19 Start Count" (int. PF 130-42)**

Intervenor states that the person who was responsible for the draft of the COA response letter telecopied to the plant site on April 7 remains a mystery, and the "inability for [sic] Georgia Power to assign responsibility or to designate the author of these statements is telling." Int. PF 130. Georgia Power, however, has stated that the April 9 letter was prepared under the direction of the corporate licensing manager, Mr. Bailey. See GPC PF 75. Since Intervenor has long been aware of Mr. Bailey's involvement (see, e.g., Int. Exh. II-95 at 6) and did not call Mr. Bailey as a witness, it is surprising that Intervenor now suggests some intrigue. In any event, since the specific statements at issue in the COA Response letter merely attempted to summarize the information that was being verbally presented (i.e. the information that had been developed at the site) and were reviewed by Mr. Bockhold with this understanding (see GPC PF 75, 79), whether it was Mr. Bailey or one of his subordinates who reproduced the diesel start information in the COA response letter is not particularly significant.

Intervenor states, "By default, the 18 and 19 starts number must have originated from the fax [of the April 7 draft] sent from the Birmingham corporate office to the site." Int. PF 131.

Since Mr. Bockhold testified that he believes the statements in the April 7 draft originated from the transparencies that were developed on the evening of April 6 (GPC PF 98), there is no basis to accept Intervenor's unsupported fancy "by default." Intervenor next states that, "The only evidence in the record of the origins of these number is from the April 7, 1990 draft of the COAR." Int. PF 131 (emphasis added). This is an amazing statement that ignores not only the testimony of numerous witnesses (particularly Mr. Cash and Mr. Bockhold) concerning the development of the start count, but also numerous transcripts of more contemporaneous statements attributing the numbers to Mr. Cash's count. See GPC PF 57-67, 83-99. See also GPC Exh. II-2 at 37; GPC Exh. II-40 at 5, 10; GPC Exh. II-42 at 7; GPC Exh. II-44 at 18; OI Exh. 9 at 8 (admitted at Tr. 4451).

Intervenor asserts that the fact that "Mr. Bockhold was still attempting to have a count of diesel starts done after the April 7th draft letter list had been drawn up is circumstantial evidence that the numbers did not come from the Plant Vogtle site." Int. PF 132. Intervenor offers no support for his representation that Mr. Bockhold was still attempting to have a count done after the April 7 draft had been prepared, and indeed there is none.

Intervenor states that "absent any testimony to the contrary which shows the origin of the material false statements, those numbers must have originated in Birmingham." Int. PF 133. As already discussed, there is ample testimony to the contrary. Further, as discussed in GPC PF 98, Intervenor's position is unreasonable. The corporate office did not possess the data necessary to perform a count and was therefore incapable of supplying the numbers. Shipman at 10; Tr. 2984 (McCoy); Tr. 3987-88, 3990-93, 4062 (Stringfellow); Tr. 10970, 11004-05 (Shipman).

Continuing to build on his unsubstantiated theory, Intervenor next takes the position that "the failure of management to offer any explanation of how those numbers came into the draft letter combined with all their actions after April 9, 1990 demonstrates willful acts originating at a corporate level above that of Mr. Bockhold." Int. PF 134. This is a prime example of the unreasonable positions that Intervenor is willing to advocate in his assault on Georgia Power management. In effect, Intervenor asks the Board to infer willful misconduct on the part of corporate management based entirely on unsubstantiated speculation and innuendo (i.e., that Mr. Cash did not provide a start count to Mr. Bockhold late on April 6).

Intervenor states that no one has ever claimed responsibility for the April 7, 1990 draft of the COA Response letter. Int. PF 137. Georgia Power has identified, to the best of its ability, the managers and executives (Mr. Bailey, Mr. McCoy, and Mr. Hairston) responsible for the April 9 letter. Int. II-95 at 6; Tr. 2939 (McCoy); GPC PF 75. Further, Intervenor presents no evidence that any question was ever raised concerning responsibility for particular prior drafts.

Intervenor states that the final version of the April 9 letter "conformed" to the statements made during the April 9 presentation. Int. PF 138. This overstates the cited testimony. While the final letter addressed essentially the same items and attempted to summarize the information that was being presented (McCoy at 8-9; Tr. 2972 (McCoy); Bockhold at 11), the April 9 letter certainly did not capture all that was said at the presentation, as evidenced by the notes of Mr. Bockhold and Mr. Bailey. See Int. Exh. II-70 and II-71.

Intervenor refers to testimony that Mr. McCoy and Mr. Hairston were involved in rewriting the COA response letter on the plane returning to Birmingham from the presentation. Int. PF

142. This testimony is irrelevant to the diesel start statement at issue, since that statement appears in the draft prepared before the presentation. See Int. Exh II-40 at 3; GPC PF 75 n.14. Intervenor also takes issue with Georgia Power's assertion that the April 9 letter was prepared under the direction of Mr. Bailey. Int. PF 142 n.26. Intervenor states that "we are not aware of any factual basis to support this claim." Georgia Power's assertion is supported by both testimony and exhibits. Int. II-95 at 6; Tr. 2939 (McCoy).^{42/}

(b) **"[Alleged] Failure to Follow Established Corporate Procedure - Blue Sheet Protocol" (Int. PF 143-50)**

In Int. PF 145, Intervenor states that a "Blue Folder" was prepared for all NRC correspondence. Intervenor provides no support for this assertion. Intervenor then states that all prior drafts were supposed to be included in the blue folder as well as a blue sheet. Int. PF 145. Again, no support in the record is identified. Intervenor cites Mr. McCoy's testimony for the proposition that the blue sheet is used by the corporate office to track responsibility for the content of correspondence. Id., citing Tr. 2953-54. This mischaracterizes Mr. McCoy's testimony. Mr. McCoy in fact specifically testified that the blue sheet is not a way of deciding who is responsible for particular documents, though from a management perspective it could be used to determine who had worked on a document.^{43/} Tr. 2953-54 (McCoy). Citing his own testimony,

^{42/} Intervenor also takes issue with Georgia Power's proposed finding that Mr. Stringfellow may have initiated the document. Int. PF 142 n.26. Mr. Stringfellow's initials appear on the blue sheet as the originator and also are on the April 7 draft that was prepared before the presentation. Int. Exh. II-47 at 2; Int. II-40 at 4. Georgia Power acknowledged in its findings that Mr. Stringfellow recalls that his only role was assisting in getting the letter typed, not in drafting or reviewing it. GPC PF 75 n.13. Georgia Power did not intend to suggest that Mr. Stringfellow drafted the letter. Georgia Power assumes that the April 7 draft which Mr. Stringfellow appears to have had typed at the corporate office was based on the draft that Mr. Bockhold provided to the corporate office early on the afternoon of April 6 (Int. Exh. II-126), with additional inputs from the transparencies that were prepared later that afternoon (Tr. 3404-05, 3450 (Bockhold)).

^{43/} In Int. PF 149, Intervenor asserts that Georgia Power takes the testimony of Mr. McCoy and Mr. Stringfellow

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Intervenor then states that corporate personnel responsible for reviewing the correspondence are required to sign off on the blue sheet. Int. PF 145. Mr. Mosbaugh admitted on cross-examination that he is not aware of any procedure that required signatures on the blue sheet, and he later testified that the policy of using the blue sheets and the meaning of those signatures was not well defined. Tr. 8502, 10666 (Mosbaugh).

Intervenor proceeds to describe how the corporate sign-off of the blue sheet "was to occur." Int. PF 146. This discussion is not based on any procedural requirements, but rather simply on Mr. Stringfellow's description of how this form was typically filled out. Mr. Stringfellow's testimony in fact indicates that the form was a carry-over from a previous system, and some of the titles in the signature blocks didn't even match current positions. Tr. 3937 (Stringfellow).

Intervenor then states that Mr. McCoy's testimony shows a failure on Georgia Power's part to follow its standard procedures and is evidence of willfulness. Int. PF 147. Mr. McCoy's testimony does not establish that the blue sheet was required by any procedure. While he testified that it would be unusual for the blue sheet not to be complete, Mr. McCoy explained that he believes the COA response was not handled like a routine piece of correspondence in that there was more hand-carrying and faxing of the document back and forth in an effort to transmit it in a timely fashion. GPC PF 118. Intervenor's inference is therefore not well founded.

Intervenor claims that "the lack of signatures indicates that no one took responsibility for the accuracy of information contained in the draft of the April 9 letter." Int. PF 148. This

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out of context. Intervenor states that "Both Mr. Stringfellow and Mr. McCoy testified that the blue folder was a means of holding someone responsible for the content of the correspondence." Intervenor, however, only cites Mr. McCoy's testimony, and that testimony indicates that the blue sheets were not used to assign responsibility.

assertion is simply untrue. As stated earlier, Georgia Power identified the persons who were responsible for the preparation of the April 9 letter. Int. II-95 at 6; Tr. 2939 (McCoy). Further, as a general matter, Mr. McCoy testified that the licensing manager is responsible to him for the accuracy of all documents being prepared for the NRC, and Mr. McCoy in turn is responsible to his superiors. Tr. 2954-55 (McCoy). See also Tr. 3598 (Hairston). And Mr. Hairston testified that he has the ultimate responsibility. Tr. 3548, 3604 (Hairston). Moreover, Mr. Bockhold expressed the belief that the specific diesel start statement in the April 9 letter originated from the transparencies that he provided to the corporate office. Tr. 3404-05, 3450 (Bockhold). Thus, there has been no attempt by anybody to shirk responsibility.

Intervenor concludes that the failure to utilize "established review and verification procedures is a strong piece of circumstantial evidence that the SONOPCO project corporate office did not want the diesel generator start information nor air quality assertions subjected to meaningful" review. Int. PF 150. This inference is unreasonable. If the corporate office had not wanted the April 9 letter reviewed, the April 7 draft (containing the diesel start statement) would not have been telecopied back to the site. Int. Exh. II-40; GPC PF 117. Rather, the incomplete blue sheet reflects the fact that the COA response letter was reviewed by telephone calls on the weekend (Tr. 7797-99 (Ward); Int. Exh. II-17 at Project No. 048001), was worked on during the plane ride back to Birmingham after the presentation (GPC PF 75 n. 14), and was subject to more hand-carrying than is customary (GPC PF 118).

(c) "[Alleged] Failure to Obtain PRB Approval" (Int. PF 151-59)

Intervenor states that the April 9 Letter was not reviewed or approved by the Plant Review Board. Int. PF 151. This topic is addressed by GPC PF 116-117. A draft of the letter was in fact distributed to managers who were members of the PRB. GPC PF 117.

Intervenor states that "protocol" at plant Vogtle "requires" PRB review of correspondence to be sent to NRC. This artfully worded assertion is unsupported and misleading. Neither the Technical Specifications in the Vogtle licenses nor Georgia Power's procedures required such review. GPC PF 116.

Intervenor states that a draft version of the April 9 letter was not circulated to the PRB members. Int. PF 154, citing Tr. 3448-49 (Bockhold). The cited testimony of Mr. Bockhold merely indicates that the April 9 letter was not reviewed by the PRB. It does not address whether drafts were circulated to PRB members. Int. Exh. II-126 shows that one draft was indeed circulated, and it is certainly possible (though not established one way or the other) that the April 7 draft was as well. Intervenor then subtly overstates and embellishes Mr. Aufdenkampe's testimony. Intervenor states that Mr. Aufdenkampe testified that he was "unaware" of a final version of the letter being circulated, whereas Mr. Aufdenkampe in fact testified that he could not recollect such a final being circulated. Tr. 4746 (Aufdenkampe). Intervenor characterizes Mr. Aufdenkampe as a "key member of the PRB," though there is no support that Mr. Aufdenkampe was any more important than other members. Intervenor further characterizes Mr. Aufdenkampe as the "manager over ENSAC [sic] (the organization responsible for coordinating site review with Corporate)." Aufdenkampe testified that, with respect to LERs, NSAC was the "interface

Department with Jim Bailey's Group in Corporate" (Tr. 5468 (Aufdenkampe), but Georgia Power has not identified any testimony characterizing NSAC as responsible for "coordinating site review with Corporate."

Intervenor refers to Mr. Mosbaugh's testimony that he was not given drafts of the April 9 letter. Int. PF 155. Mr. Mosbaugh's testimony appears inconsistent with Int. Exh. II-126, which indicates that a draft was circulated to Mr. Mosbaugh.⁴⁴

Intervenor cites Mr. Bockhold for the proposition that "the normal and established practice at that time was to submit all NRC correspondence for PRB review." Int. PF 156, citing Tr. 3448 (Bockhold)(emphasis added). Mr. Bockhold testified that NRC correspondence would "typically" be submitted to the PRB. He did not state that "all" NRC correspondence was submitted to the PRB.

In Int. PF 157, Intervenor mischaracterizes Mr. McCoy's testimony as stating that PRB review was not needed because the April 9 letter was going from a high level to the NRC. Mr. McCoy was asked whether the COA response would be the type of letter normally reviewed by the PRB, and he responded that, as far as he could recall, the April 9 letter was the only one of its

⁴⁴ In footnote 28, Intervenor mischaracterizes GPC PF 117. Intervenor states that Georgia Power asserts that two drafts were transmitted to the site and presumably distributed to PRB members. GPC PF 117 does not state that two drafts were transmitted to the site. The first draft (Int. Exh. II-126) was generated at the site. GPC also does not state that both drafts were distributed to PRB members. GPC PF 117 only states that the first draft was distributed to managers who were members of the PRB.

Intervenor further notes that Int. Exh. II-126 would not be recognized as a draft of the letter. Int. PF 155 n.28. This presupposes that there were no discussions at the site, which is unlikely. Intervenor also asserts that Mr. McCoy interpreted the check marks on the distribution list as indicating that the document was only transmitted to the persons who have a check mark by their name. *Id.* Intervenor provides no citation, perhaps to conceal the inaccuracy of this representation. Mr. McCoy testified that he interpreted the check marks as indicating the persons who had provided comments back. Tr. 3122, 3134-35 (McCoy).

type that Georgia Power had sent and there really was not any "norm." Tr. 2946. Adding that the letter was from a high level in the organization to the NRC, Mr. McCoy could not agree that this would be a typical letter to be reviewed by the PRB. Id.^{45/}

Citing Mr. Horton's testimony, Intervenor asserts that the PRB was formed in order to review documents for accuracy. Int. PF 158. Mr. Horton's testimony does not support this assertion. Further, Mr. Aufdenkampe explained that the PRB was not a quality assurance organization and did not perform independent verification. Tr. 4781. For example, the PRB was not responsible for ascertaining that everything in an LER was accurate. That responsibility belonged to Mr. Aufdenkampe's and Mr. Mosbaugh's department. Id.

Intervenor concluded that the departure from "procedure" is circumstantial evidence of Georgia Power's "willful intent to mislead the NRC" and "intent to circumvent the review process needed to expose" the erroneous statements. Int. PF 158, 159. PRB review might have been a good idea, but since it was not required and the COA Response letter was not typical, Intervenor's inferences are unwarranted.

K. "Bockhold's April 10 Staff Meeting" (Int. PF 160-62)

Intervenor states that when Mr. Bockhold distributed the April 9 letter during an April 10 staff meeting, Intervenor suspected both the diesel start statement and the air quality statement and asked "who has done the review that had drawn these conclusions." Int. PF 160. This proposed finding is misleading. While it is possible that Mr. Mosbaugh suspected the diesel start

^{45/} Intervenor adds in a footnote that "Mr. Hairston did not know whether portions of the April 9th letter were ever subject to verification." Int. PF 157 n.30 (emphasis added). Intervenor cites his own testimony. Intervenor's testimony, however, is that Mr. Hairston stated in a deposition that he did not know that section 4 of the letter was ever verified. See Mosbaugh at 67.

statement, he made no mention of any such concern during the Staff meeting. His question about who had done the review related solely to the air quality statement. See Mosbaugh at 32; Int. Exh II-25 at 2. Intervenor states that Mr. Bockhold did not answer the question. Mr. Bockhold did, however, respond to the substantive issue that he understood Mr. Mosbaugh to be raising. Int. II-25 at 2.

Intervenor asserts that the statement regarding no problems or failures "jumped out at [him] as being suspect" because he was aware there had been failures. Int. PF 161. This is addressed in GPC PF 114-15. If Intervenor's assertion is true, it is disappointing that Mr. Mosbaugh said nothing to Mr. Bockhold or anybody else responsible for the April 9 letter until April 19.

After quoting portions of the April 11 conversation between Mr. Kochery and Mr. Mosbaugh, where Mr. Kochery informed Mr. Mosbaugh the Mr. Cash had the diesel start data needed to check the April 9 letter, Intervenor asserts, "We believe the record supports that Mr. Mosbaugh, after locating and reviewing the necessary information determined that the April 9, 1990 letter was in fact inaccurate with respect to the diesel generator statement and that Mr. Bockhold was aware of this." Int. PF 162. Georgia Power assumes that Intervenor's assertion refers to Mr. Mosbaugh's efforts from April 19 through April 30, when he provided his memorandum to Mr. Bockhold. Georgia Power is not aware of Mr. Mosbaugh ever obtaining the Cash list, though he had multiple opportunities to do so.

L. "April 10, 1990 IIT Conference" (Int. PF 163-69)

Int. PF 163-66 are a masterful juxtaposition and exaggeration of quoted snippets to create a misimpression of the tenor of an April 10 teleconference with the IIT.⁴⁶ Intervenor states that the NRC "made it known, in no uncertain terms" that they were concerned by "Georgia Power's 'dragging out' the submission of documentation NRC needed to complete its licensing activities and that the delay in transmitting this documentation had begun to 'cause the team not to be able to complete its activities in timely fashion.'" Int. PF. 164. In contrast, Mr. Chaffee stated that the IIT team "is beginning to become a little concerned that some of the stuff, we have a sense that it is dragging out." GPC Exh. II-31 at 2. He also stated, "We may be premature in our concern, but as we said before, we need you guys to get us the documentation as soon as possible, and the stuff that we haven't gotten is beginning to cause the team not to be able to complete its activities in a timely fashion." Id. This was an incipient concern, and there was no suggestion in Mr. Chaffee's remarks that Georgia Power was attempting to "drag out" submission of documents, as Intervenor seeks to imply.

Intervenor then asserts that "the specific documentation that Georgia Power had failed to submit concerned diesel starts and data pertaining to the CALCON sensors." Int. PF. 164. In contrast, the main information that the NRC was having trouble pulling together was the sensor history. GPC Exh. II-31 at 3-4. The NRC had therefore requested further information from Georgia Power, and Mr. Aufdenkampe assured the IIT that they had worked on the data request

⁴⁶ Intervenor's identification of the participants, in Int. PF 163, is incomplete.

diligently, including over the weekend, and would be able to provide it by the next morning^{47/} Id.
at 4.

With respect to the diesel start data, Intervenor states that "NRC specifically identified to Georgia Power that they wanted a document stating 'when the diesel started and stopped, how it started, did you ever have any problems, that sort of stuff.'" Int. PF 165, citing GPC Exh. II-31 at 5. This statement mischaracterizes the discussion at page 5 of the IIT transcript. There, when Mr. Aufdenkampe volunteered to have the diesel log updated and faxed to the IIT, Mr. Kendall suggested that it might be a good idea to have Ken Stokes call him so that he could explain what the IIT was trying to get. GPC Exh. II-31. Mr. Aufdenkampe agreed. At this point, Mr. Chaffee offered his understanding of what Mr. Kendall wanted (i.e., when the diesel started, etc.), but did not specifically identify wanting a document. After some further discussion, Mr. Kendall again stated that "the best thing to do is to have Ken Stokes call me." Id. at 6.

Intervenor states that "in addition to obtaining written data, NRC requested that Mr. Stokes contact them and orally explain the data NRC was desperately seeking." Int. PF 166, citing GPC Exh. II-31 at 5. When read in context, it is clear that the request that Mr. Stokes call Mr. Kendall was not "in addition" to the provision of written data. Rather, Mr. Kendall wanted to speak with Mr. Stokes to explain what specific information was needed. Intervenor then states that Mr. Aufdenkampe advised the NRC that the updated log would be faxed to the NRC. Int.

^{47/} The April 10 teleconference was on a Tuesday (April 10), and the IIT's request for sensor history had been made the previous Thursday or Friday. See GPC Exh. II-31 at 1, 3.

PF 166. This offer preceded, and in fact prompted, Mr. Kendall's request that Mr. Stokes call him.

Intervenor represents that Mr. Aufdenkampe testified that "the only start count data transmitted to the NRC in response to the April 10 IIT conference call was a list of starts that went up to April 1." Int. PF 167, citing Tr. 4757-59 (Aufdenkampe). Mr. Aufdenkampe did not state that this list was "the only start count data" transmitted in response to the IIT request (though it is possible). Intervenor further states that Mr. Aufdenkampe acknowledged that this documentation did not satisfy the request by the NRC on April 10. Int. PF 167. While Mr. Aufdenkampe testified that the list of starts through April 1 would not have satisfied the NRC's request "as delineated in the phone call," he also specifically noted that the IIT requested that Mr. Stokes call Mr. Kendall, and that Mr. Stokes did so. Tr. 4760. Staff Exh. II-63 confirms that Mr. Stokes (and Mr. Kochery) did indeed call Mr. Kendall that very same day, and were told by Mr. Kendall that what he needed were the completion sheets for the special tests that had been run on the diesels. Staff Exh. II-63 at 6. There is no indication that Mr. Kendall asked for a list as well. See id. But if he did, it is possible that he told Mr. Stokes that he was only interested in diesel starts up through the declaration of operability. In such case, a list of starts through April 1 (the day the 1A diesel was declared operable) would have been responsive.

In Int. PF 168, Intervenor states that Mr. Stokes confirmed that by April 13, Georgia Power still had not provided "the requested start data." Mr. Stokes' testimony relates specifically to the completion sheets that he was collecting for Mr. Kendall. See NRC II-63 (Tr. at 6), Tr. 7304-05 (Stokes). Mr. Stokes further testified that he has no doubt that he provided the data to

Mr. Kendall. Tr. 7307 (Stokes). He added that he had to track down some of the completion sheets, and it took a while. Tr. 7308-09 (Stokes).

Intervenor states that "NRC witnesses" could not recall receiving a complete and/or accurate list of diesel starts from Georgia Power. Int. PF 169. Intervenor cites only one witness, Mr. Kendall, an ex-NRC employee called as a witness by Georgia Power. Mr. Kendall's testimony on this point is simply that he cannot recall whether the NRC received a complete list or not. Tr. 5055 (Kendall). This testimony has no pejorative connotation, particularly since Mr. Kendall testified that he did not have problems getting answers from Georgia Power personnel. Id. See also Kendall at 4; GPC Exh. II-17 at 2.

M. "Drafting of Licensing Event Report" (Int. PF 170-73)

Citing to Mr. McCoy's testimony, Intervenor states that NSAC was responsible for preparing "an initial draft" of the LER. Int. PF 170. Mr. McCoy's testimony is that NSAC was responsible for preparing the LER. His testimony is not limited to the "initial draft" (see McCoy at 11), and Intervenor's insertion of these additional words is inappropriate.^{48/}

Intervenor cites Mr. Stringfellow for the proposition that LER 90-06 received "special" attention from "corporate management." Int. PF 172. Mr. Stringfellow testified that LER 90-06 received more management attention than would a routine LER. Tr. 3999 (Stringfellow). His testimony does not distinguish between the site and corporate management. Intervenor further asserts that as a result of the April 10 IIT conference call, "Corporate" had to be well aware of the

^{48/} Intervenor states in a footnote that after the initial draft, the responsibility transferred to the Plant General Manager and then to corporate personnel. Int. PF 170 n.34. Intervenor provides no support for this statement, which is belied by the weight of the evidence. See GPC PF 241-42.

fact that the NRC had already questioned the accuracy of the diesel start count presented to the NRC on April 9, 1990. Intervenor provides no citation or support for this assertion. Nor does he identify to whom he is referring with the vague "Corporate" label. In fact, there is no evidence that either of the corporate employees who participated in the April 10 call (Ward and Burr - see Int. PF 163) had any substantial involvement in the preparation of the LER.⁴⁹

Intervenor states that Mr. Webb testified that he felt it was more appropriate to use valid tests and failures when drafting the LER "but that his management chose to do otherwise" because that was not what was written in the April 9 letter. Int. PF 173. Mr. Webb's testimony merely indicates that Mr. Aufdenkampe told him to use the information in the April 9 letter. Tr. 13121 (Webb). There is no indication in the record that Mr. Webb recommended to Mr. Aufdenkampe that valid start terminology should be used in this time frame.

i. "April 12 PRB Review" (Int. PF 174-78)

Intervenor asserts "Mr. Aufdenkampe testified that on or prior to April 13 he had discussions with Mr. Odom and Mr. Mosbaugh and presumably the Critique Team that the start count in the April 9 letter was suspect." Int. PF 175. Intervenor again overstates testimony. Mr. Aufdenkampe stated:

I think Allen [Mosbaugh] had a question about it. I think we had some discussion with Rick Odom. I don't know, maybe Tom Webb. There might have been some people in the critique team.

Tr. 4753 (Aufdenkampe).

⁴⁹ Mr. Ward testified that he reviewed a draft of the LER but he had no suspicion that it contained incorrect or misleading information. Tr. 7750-51, 7753 (Ward).

Intervenor states that by April 13, Mr. Webb and Mr. Aufdenkampe had discussed the fact that the 18 and 19 start count in the April 9th letter "appeared to be false." Int. PF 176. Mr. Aufdenkampe's testimony, cited by Intervenor, makes no reference to any determination that the numbers were false, but simply indicates that they were questioned. Tr. 4750 (Aufdenkampe). Mr. Webb's testimony is that Mr. Aufdenkampe told him to take the numbers out of the draft because they might not be correct. Tr. 13114 (Aufdenkampe).

Intervenor states that "Mr. Aufdenkampe discussed with Mr. Bockhold whether or not he should leave in the 18 and 19 start count." Int. PF 177, citing Tr. 4765. Mr. Aufdenkampe provided no such testimony. His testimony at Tr. 4765 is only that he recalls Mr. Bockhold stating that the numbers had been verified by Mr. Cash. This is presumably a reference to Mr. Bockhold's statement during the April 19 conference call. Intervenor's reference to this statement in Int. PF 177, which in the sequence of findings appears to suggest that the statement was made in the April 13 to April 18 time-frame, is very misleading. Intervenor adds that Mr. Aufdenkampe was left to wonder where Mr. Bockhold obtained the information to validate the start count he presented to the NRC. Int. PF 177. Mr. Aufdenkampe's testimony at Tr. 4766, which Intervenor erroneously attributes to Mr. Bockhold, is clearly retrospective and not indicative of Mr. Aufdenkampe's state of mind prior to the issuance of the LER.

Intervenor states that "knowing that the diesel start count was critical, Mr. Shipman instructed Mr. Aufdenkampe to have George Bockhold approve the diesel start language contained in the LER." Int. PF 178. This mischaracterizes the testimony. Mr. Aufdenkampe testified that he recalls corporate asking that Mr. Bockhold sign off "on the draft LER," not the "diesel start

language" as Intervenor asserts. Further, Mr. Aufdenkampe did not state that Mr. Shipman "knew that the start count was critical" prior to the April 18th PRB meeting when Mr. Bockhold's sign-off was solicited. Rather, Georgia Power understands Mr. Aufdenkampe's testimony to state that Mr. Shipman wanted Mr. Bockhold to sign off on the draft LER because of its criticality. See Tr. 4774-75 (Aufdenkampe).⁵⁰

ii. "April 18 PRB Review of the LER" (Int. PF 179-80)

Int. PF 179 is derived from GPC PF 133, but omits the fact that Mr. Mosbaugh votes to approve the LER, apparently without comment. See GPC PF 133 for a more complete finding.

Int. PF 180 states that "following the April 18th PRB meeting, Mr. Webb revised the LER to state that the diesel had been started 21 and 23 times in lieu of the 18 and 19 previously stated in the April 9 letter." In fact, the draft LER, as revised after the April 18 PRB meeting, stated that the diesel had been started "more than twenty times each" and this language replaced the prior reference to "several starts." See GPC PF 134.

Int. PF 181 states that there does not appear to be any sound basis to have reinserted the 18 and 19 count back into the LER without first verifying the numbers. The 18 and 19 numbers were not reinserted back into the LER. It is true that Mr. Webb used the 18 and 19 numbers to arrive at the "more than twenty times each" statement included in the draft LER after the April 18 PRB meeting, but he believes he may have received some indication that the 18 and 19 numbers had in fact been correct (Tr. 13115-16); and in any event, when this next draft of the LER was

⁵⁰ Since at that point in time (prior to the April 18 PRB meeting) the draft LER only contained a general statement that the diesels had been started "several times," Intervenor's attempt to suggest that Mr. Shipman viewed the statement as "critical" makes no sense.

reviewed, both the corporate office and the PRB asked for verification of the "more than twenty times each" statement. GPC PF 137-38, 140-42.^{51/}

In Int. PF 183, Intervenor states that upon review of the draft LER, Mr. Hairston remembered the "18 and 19" numbers from the April 9th presentation and "wanted to know why the number was being changed." Int. PF 183. Mr. Hairston did ask why the numbers were being changed. He asked that the numbers be checked. See Hairston at 6. See also GPC Exh. II-25 at Project No. 057942 (marginal note to "verify" greater than 20 starts). Intervenor's sly rephrasing of Mr. Hairston's testimony appears designed to suggest that Mr. Hairston was interested in retaining the prior numbers, when there is no such implication in his testimony. Since Int. PF 183 appears to be derived by editing GPC PF 138, Georgia Power believes that Intervenor's attempt to misstate Mr. Hairston's testimony is deliberate.

Int. PF 185 is derived from GPC PF 138, but fails to mention that the corporate comments included Mr. Hairston's instruction to verify the greater-than-20-starts statement. See GPC PF 138. This would appear to be another deliberate alteration of uncontested fact.

Int. PF 188 is incomplete. Intervenor has edited GPC PF 141 to delete statements showing the effort by both Mr. Kitchens and Mr. Frederick to be accurate, as well as remarks by Mr.

^{51/} In a footnote, Intervenor states that Mr. Webb's testimony omits mention of "who instructed him to reinsert the 18 and 19 numbers from the April 19 letter." Int. PF 181 n.39. There is no indication in the record that anybody instructed him to reinsert these numbers. The PRB instructed him to state the number of starts in the LER, and Mr. Webb used the April 9 numbers as the starting point to comply with this instruction. In any event, the statement that the diesels were started more than 20 times each was not included in the final LER, and there is little point dwelling on the "responsibility" for this prior draft (as Int. PF 181 n.39 seems to do) when it does not represent any false statement made to the NRC.

Mosbaugh shedding light on his specific concern. See GPC PF 141, 142. A comparison of GPC PF 141 with Int. PF 188 is instructive of Intervenor's technique.

Intervenor states, "Significantly, the PRB omit that the LER was approved with comment requiring the diesel start sentence to be reworded and the number of starts verified." Int. PF 189. Intervenor does not explain why this is significant -- and it is hardly apparent -- particularly since Mr. Aufdenkampe, who was responsible for the action items, and Mr. Mosbaugh, to whom Mr. Aufdenkampe reported, were both present.

iii. "Corporate is Notified of Diesel Generator Problems and Failures" (Int. PF 191-96)

In Int. PF 195 n.46, Intervenor indicates that on April 19, he believes that he had a handwritten list prepared by Mr. Kochery which included starts in early April. This is unlikely for the reasons discussed in GPC PF 151 n.36.

Referring to the telephone calls between Mr. Mosbaugh and Mr. Shipman and Mr. Stringfellow on the afternoon of April 19 (prior to Call A), Intervenor asserts, "The record supports the finding that Mr. Stringfellow and Mr. Shipman proceeded to Mr. Hairston's office to advise him of Mr. Mosbaugh's statement that the April 9th letter constituted a material false statement." Int. PF 196, citing Tr. 3951, 3953-54 (Stringfellow). This proposed finding is not supported by the testimony that Intervenor cites. Mr. Stringfellow testified that the transcript of tape 57 indicates that he was going to update Mr. Hairston on the status of his questions, but Mr. Stringfellow cannot recall what may have been relayed to Mr. Hairston, or in fact, even if or when they may have spoken to Mr. Hairston. GPC PF 153. Intervenor does not even mention the testimony of Mr.

Shipman, Mr. McCoy, and Mr. Hairston, which is summarized in GPC PF 198-205. In addition, Mr. Mosbaugh never stated to anybody on April 19 that the April 9 letter constituted a material false statement.

iv. **"McCoy, Hairston and McDonald [Allegedly] Consider Mr. Mosbaugh's Allegation that a Material False Statement Was Made In the April 9 Letter" (Int. PF 197-203)**

Intervenor's PF 197-203 argue that Messrs. McCoy, Hairston, and McDonald were informed that the diesel start statement in the April 9 letter was a material false statement. While inaccuracies and infirmities in Intervenor's proposed findings are identified below, as a general matter, Intervenor avoids any precise identification of the specific concern that was expressed to individuals (Mr. Stringfellow and Mr. Shipman) in the corporate office. The concern that was expressed by the site personnel was that there had been some failures of the diesel after March 20. See GPC PF 142, 144, 147, 152, 199, 202. Mr. McCoy believes he was indeed told that there was a concern that the NRC might not have understood that there were additional problem starts after the site area emergency, and he addressed this concern by calling Mr. Brockman to make sure that the NRC understood that there had been such failures. GPC PF 202; GPC Exh. II-2 at 28. See also GPC Exh. II-235 at 10. The wording of the LER was also changed to avoid any possible implication that there had been no failures after March 20. GPC PF 194. Based on the tape transcripts, it appears that neither Mr. Mosbaugh nor anybody else from the site told the corporate office that the 18 and 19 numbers were wrong. Thus, while certain individuals in the corporate office were aware of the concerns that had been raised by the site prior to Call A, those concerns did not implicate the final LER language.

In Int. PF 197, Intervenor states that he was told that "the highest corporate officers in the company were considering the false statement contained in the April 9th letter." This statement is inaccurate. See GPC Exh. II-1 at 72-73; GPC PF 155, 201.^{52/}

Intervenor states that Mr. Aufdenkampe testified that he received this information from Mr. Stringfellow. Int. PF 198. This statement is inaccurate. Mr. Aufdenkampe testified that although he thinks there may have been another call with Mr. Stringfellow during the day, he does not have a specific recollection. Tr. 5537 (Aufdenkampe). Further, Mr. Aufdenkampe testified that he could have just "made the jump" that Mr. Stringfellow had carried the information up. He does not know. Tr. 5537-38 (Aufdenkampe).

Intervenor asserts that "Mr. Stringfellow testified that he believes that he would have told Mr. Hairston about the material false statement in the April 9 letter." Int. PF 199. The testimony, discussed by Intervenor in a footnote, does not support this assertion. See Int. PF 199 n.49. See also GPC PF 153. In particular, while Mr. Shipman or Mr. Stringfellow probably did communicate (perhaps to Mr. McCoy upon his return rather than Mr. Hairston) that some concerns had been raised by the site, it is unlikely that they would have characterized the April 9 letter as a material false statement for the reasons stated in GPC PF 197-205.

^{52/} Intervenor states that the transcript of tape 57 "establishes that the issue of whether the April 9th letter contained a material false statement was passed up the corporate chain and a meeting was held between Messrs. McCoy, Hairston and McDonald to determine how to resolve the matter." Int. PF 197 n. 48. Mr. Aufdenkampe's statements on Tape 57, however, are not based on any personal knowledge and indicate that he was uncertain and did not know who in the corporate office (other than Mr. Shipman and Mr. Stringfellow) was considering the communicated concerns. Intervenor's inference that there was a meeting of the executives on this matter is pure fancy.

Were this not a matter of serious concern involving allegations of wrongdoing, Intervenor's mischaracterizations and web-weaving might be amusing novel reading. Given the actual seriousness of the proceeding, however, it is unwarranted license with the facts.

After referring to certain testimony by Mr. Hairston, Intervenor states that the "evidence demonstrates that Mr. Hairston knew of Mr. Mosbaugh's concern that the April 9th letter contained a material false statement." Int. PF 201. Mr. Hairston's testimony⁵³ does not demonstrate any such thing. In addition, on April 19, Mr. Mosbaugh never stated to anybody that the April 9 letter "contained a material false statement."

Intervenor next asserts that Mr. McCoy testified, both in 1990 and at the hearing, "that on the afternoon of April 19, 1990, Mr. Shipman relayed Mr. Mosbaugh's concern that the April 9th letter contained a material false statement as did the draft of the LER." Int. PF 202. Mr. McCoy provided no such testimony in this proceeding. His testimony is that he believes that Mr. Shipman may have told him that Mr. Mosbaugh had raised a concern that the NRC might not have understood that there were additional problem starts after the site area emergency. McCoy at 16; Tr. 2979. See GPC PF 202-203. Mr. McCoy's 1990 testimony (quoted in Int. PF 202 n.52) is ambiguous (because of the imprecision of the questions asked). At most, it indicates that Mr. McCoy was aware that Mr. Mosbaugh had raised a concern about the April 9 letter, not that it contained "a material false statement."⁵⁴

⁵³ Intervenor refers to Mr. Hairston's testimony that, "knowing what I know today, I'd sure put something in [the April 9 letter] about having some problems and put the dates we had them." Tr. 3612 (Hairston). This testimony provides no indication that Mr. Hairston was aware of Mr. Mosbaugh's concerns on April 19.

⁵⁴ Intervenor launches into a diatribe over Mr. McCoy's affidavit asserting that his 1990 testimony was imprecise. It is unfortunate that Intervenor chose to introduce this testimony as an exhibit only after Mr. McCoy's illness made him unavailable to explain it in person.

v. **"Hairston's [Alleged] Preoccupation and Personal Involvement with Fine Tuning the LER" (Int. PF 204-10)**

Int. PF 204 states that "after the corporate office was notified about the material false statement in the April 9th LER, Mr. Hairston remained interested in interviewing the operator who first entered the diesel building during the site area emergency." For the reasons previously discussed, Georgia Power disagrees with Intervenor's characterization of the concern that was communicated to the corporate office. In addition, there is no connection between this concern and Mr. Hairston's request to speak to the operator.

Intervenor states that "Mr. Hairston's decision to remain so personally involved with resolving what the operator saw is indicative of Mr. Hairston's level of involvement in the LER." Int. PF 205. There is no indication that Mr. Hairston had the same level of involvement on other LER issues. Mr. Hairston in fact disagreed with Intervenor's suggestion that his involvement was "very hands-on." Tr. 3613 (Hairston).

Intervenor states that having Mr. Mosbaugh set up the call with the operator diverted Mr. Mosbaugh from participating in a "scheduled conference call between Mr. McCoy, Mr. Shipman, and Mr. Bockhold to resolve Mr. Mosbaugh's concern that the April 9 letter contained a material false statement." Int. PF 206. This is a mischaracterization of the April 19 conference call. Intervenor proceeds to suggest that his not being invited to participate in the conference call indicates that Mr. Mosbaugh was suspected of being a potential whistleblower, and that Mr. Hairston's statements show that he was aware of the scheduled conference call. Int. PF 207, 209. Intervenor's silly theory that there was a conspiracy to exclude him is addressed by GPC PF 209-14.

vi. "Introduction of the CTP Phrase" (Int. PF 211)

Intervenor asserts that the transcript of Call A shows that Mr. McCoy and Mr. Bockhold reworded the LER diesel start statement. Int. PF 211. The transcript in fact shows that Mr. Stringfellow and Mr. Shipman were also involved in suggesting wording changes. See GPC Exh. II-2 at 8-9. Intervenor asserts that they added an undefined starting point for the count. While Georgia Power agrees now that the reference to the Comprehensive Test Program was vague and undefined in the LER, there is substantial evidence that Mr. Bockhold explained what he meant by this term. GPC PF 160-62. Intervenor states that Messrs. McCoy and Bockhold reworded the LER to reflect the same number of starts presented to the NRC on April 9th. Mr. McCoy wanted to use these numbers because he was assured by Mr. Bockhold that they had been verified as correct by Mr. Cash. GPC PF 207.

N. "Failure to Define 'Comprehensive Test Program' " (Int. PF 212-24)

In Int. PF 212, Intervenor proposes that the Board find that it has "no idea" what the comprehensive test program meant. Such a finding would be inappropriate in light of Mr. Bockhold's testimony concerning what he meant and the corresponding statements on tape 58. See GPC PF 161-62. See also GPC Exh. II-122 at 12 (Mr. Aufdenkampe recalled in August 1990, that Bockhold has a specific point in mind).

Intervenor then refers to various testimony that individuals could not define the comprehensive test program. Int. PF 213-16, 218-19. This testimony simply indicates that the term had no formal meaning and was susceptible to different interpretations. Mr. Bockhold intended the phrase to refer to the testing that ended with the recalibration of the sensors and logic testing.

GPC PF 162. It should not be forgotten that the precise phrase in the LER referred to the "control systems" having been subjected to a comprehensive test program, which could be understood as a reference to the logic testing of those controls.

Intervenor states in Int. PF 217 that Mr. Shipman and Mr. Aufdenkampe were at a loss to tell Mr. Mosbaugh what definition Mr. Bockhold had in mind. This statement is untrue. Mr. Shipman referred to Mr. Bockhold's statement that the count started after the sensor recalibration (GPC Exh. II-2 at 22-23), and Mr. Mosbaugh responded, "So we want to start it after we completed the logic, the logic test?" Id. at 23.

Intervenor states that determining where the comprehensive test program ended was of no importance to Mr. McCoy. Int. PF 223. Intervenor fails to explain the context of Mr. McCoy's testimony. On April 19, 1990, Mr. McCoy did not think of asking when the test program ended because that information would not have done him any good in determining whether the count was accurate. What he wanted to know was that the information had been checked and it was accurate. Tr. 2985 (McCoy). He specifically stated during Call A that "we need to be sure that we know the number of starts after we've completed the comprehensive control test program" and was assured by Mr. Aufdenkampe that the logs were being checked and by Mr. Bockhold that the numbers had been verified correct by Mr. Cash. GPC Exh. II-2 at 8.

i. "[Alleged] False Definition of CTP In Interrogatory Response" (Int. PF 225-30)

Intervenor argues that Georgia Power made false statements in written response to questions from this Board regarding the definition of comprehensive test program. Int. PF 225. The

discussion that ensues in Intervenor's proposed findings relates to a response to an NRC Staff interrogatory, not to any Board questions. See Int. Exh. II-57, cited in Int. PF 225-228.

In the response to the Staff's interrogatory, Georgia Power stated its understanding of Mr. Bockhold's intent in referring to the test program (i.e. recalibration and logic testing). Int. Exh. II-57 at 3. Georgia Power's interrogatory response is consistent with Mr. Bockhold's testimony in this proceeding. Compare Tr. 2466-68 (Bockhold). Since the NRC Staff also asked Georgia Power to identify specific start numbers associated with this definition, Georgia Power also endeavored to apply Mr. Bockhold's definition and identify the first start after the recalibration and logic testing to which Mr. Bockhold had referred. See Int. Exh. II-57 at 3. This resulted in the identification of Start 148 of the DG1A diesel on March 30 and start 137 on DG1B on March 27. Id. Intervenor takes issue with Georgia Power's response because some switches were also replaced and calibrated on March 31. Int. PF 228-29. The As-built Fragnet, however, shows that the planned calibration of switches and logic testing occurred consistent with Georgia Power's interrogatory response (i.e., by March 30 for the 1A diesel and by March 27 for the 1B diesel). See GPC Exh. II-105. There was some calibration of switches after March 30 (for example, on March 31, when a sensor was found venting), but Mr. Bockhold testified in this proceeding that these were not part of the test program of the control systems to which he was referring. Tr. 3478-81, 3498-99 (Bockhold). Therefore, there is no merit to Intervenor's allegation.

Intervenor states that it is not credible for Mr. Bockhold to believe this definition, because if one counts backwards from April 9, one does not arrive at the specified starts. Int. PF 230. This fact, however, only signifies that Mr. Bockhold and Mr. Cash had different understandings of

the beginning point of the count, as the testimony in this case indicates (see GPC PF 66), and that Mr. Cash counted back farther than Mr. Bockhold realized. It does not negate Mr. Bockhold's understanding on April 19, as evidenced by the recorded remarks of Mr. Shipman and Aufdenkampe. See GPC PF 161.

ii. "Reason for Inserting CTP into the LER" (Int. PF 231-35)

Intervenor states that "Mr. Stringfellow did not know if [the] LER and COA had the same starting point." Int. PF 231, citing Tr. 4092 (Stringfellow). The cited testimony indicates that Mr. Stringfellow does not know today whether the counts reported in the two statements had the same starting point. However, he also testified that he believed in 1990 that they were reporting the same information. Tr. 4040-41 (Stringfellow). Intervenor states that Mr. Stringfellow felt that the LER was correct based on Bockhold's explanation that the trips occurred after the CTP. Int. PF 231. This proposed finding is incomplete. Mr. Stringfellow also believed that the LER was correct based on the input he received from the site. Stringfellow at 9; Tr. 3989, 3994-98 (Stringfellow).

In Int. PF 232, Intervenor refers to Mr. Stringfellow's testimony that the reference to the comprehensive test program was introduced to clarify that the counted starts occurred after the comprehensive test program. Intervenor argues that "this is simply not possible because the comprehensive test program was an undefined term alien to both plant and NRC nomenclature." Int. PF 232. Intervenor's logic is faulty. Certainly, the reference to the "comprehensive test program" is now recognized as being subject to various interpretations. But the fact that it was a poor choice of words does not negate the intent to clarify the starting point of the count. Certainly, the

addition of this phrase eliminated any misinterpretation that the succession of successful starts began immediately after March 20. Further, it appears that Mr. Bockhold explained what he meant by the use of this term. GPC PF 161-62. Thus, this phrase was introduced to clarify what Mr. Bockhold understood was the starting point of the count. It just did so ineffectively.

In Int. PF 233, Intervenor asserts that the phrase was inserted into the LER because Georgia Power knew that the COA language that had been used on April 9 was false. This is a gross overstatement. At most, the record shows that individuals recognized that the April 9 letter could be misinterpreted. The reference to the comprehensive test program was clearly inserted to avoid any implication that there had been no failures after March 20, and this was indeed prompted by the concerns expressed by the site. Mr. McCoy, however, telephoned Mr. Brockman and determined that the NRC had not interpreted the April 9 information in this manner. GPC PF 171-72. Mr. McCoy was also told that the start count presented to the NRC on April 9 had been verified as correct. GPC PF 164-65. It is therefore an unwarranted overstatement to say that Georgia Power knew that the April 9 letter "was false." GPC PF 202-03. Indeed, even Mr. Mosbaugh, on two separate occasions, on April 11 and on April 19, expressed the opinion that the April 9 letter would be correct if there had been sufficient consecutive successful starts after the last failure.

See GPC PF 129, 155.

Intervenor proceeds to argue that "Georgia Power also knew that the NRC was inquiring into the previous statement and had asked for a list," and that "this presented a dilemma" because pulling the statement from the LER "would clearly evidence a recognition that the COA statement was false." Int. PF 233. Intervenor theorizes that Georgia Power was not willing to acknowledge

that the COA letter was inaccurate so soon after restart, and therefore "made the LER statement look enough like the COA as not to raise eyebrows at the NRC." Id. This disgusting speculation is baseless. Intervenor's vague reference to "Georgia Power" is in fact indicative of the gaps in Intervenor's theory. There is no basis in the record for any belief that Mr. Bockhold, Mr. McCoy, Mr. Shipman, Mr. Stringfellow, or Mr. Hairston were aware of remarks that the IIT had made on April 10.²² Second, there is no basis for the suggestion that Georgia Power had to include a diesel start statement in the LER so that the NRC would not note its absence and infer that the prior (April 9) statement was false. There was no requirement or need to include the diesel start statement in the LER at all, Tr. 4001 (Stringfellow), and therefore no reason to be concerned that the NRC would note its absence if the statement were not included in the LER. Further, there is no evidence that Georgia Power was unwilling to report inaccuracy to the NRC. When it became clear in May that the numbers were wrong, Georgia Power promptly called Mr. Ebnetter, Mr. Brockman, and the Resident Inspector. GPC PF 264-66. Intervenor provides no reason why Georgia Power would be so reluctant to acknowledge an error at the end of April when it did so readily in May. Finally, the record shows that the difference between the actual and reported numbers was not significant from a technical or regulatory perspective. GPC PF 121. Therefore, there is no reason to assume that Georgia Power would have had any concern that acknowledging an error would affect the NRC's prior restart decision. For all these reasons, Intervenor's suggestion that Georgia Power needed to cover-up the inaccuracy of the April 9 letter does not withstand close scrutiny.

²² With respect to whether the IIT asked for a list, see discussion on page 38, supra.

Without any citation to evidence, Intervenor states that Georgia Power's incorporation of the CTP phrase into the LER was deliberate and inappropriate "because the drafters of the phrase knew or should have known that this phrase obfuscated the meaning of the diesel start count because it had not been defined." Int. PF 234. Certainly, it would have been much better to have used more precise terminology, but there is no indication in the record (other than Mr. Mosbaugh's unsupported speculation) that anybody had any intent to obfuscate, or that any purpose was served by obfuscation. Intervenor states that "Georgia Power had never before submitted a document needing oral explanation before it could be interpreted by NRC." The record does not support this sweeping statement,^{56/} and the Board could take official notice of the fact that NRC questions about the basis for statements in safety analysis reports and other licensee submissions is commonplace. Intervenor concludes that the submission of a document requiring oral explanation is "strong evidence of wrongdoing." In essence, Intervenor argues that the submission of a vague statement should be viewed as intentional misconduct because vague statements are inappropriate. This is bootstrapping at its worst.

Intervenor concludes by referring to Mr. Shipman's post hoc observation that inclusion of the "comprehensive test program" in the LER was the "equivalent of throwing a 'monkey wrench in the works.'" Int. PF 235. There is nothing inappropriate about this observation. Mr. Shipman acknowledged in this proceeding that the "comprehensive test program" should have been defined in the LER. GPC PF 257. His observation is understandable, particularly when one recognizes

^{56/} Intervenor refers to Mr. Stringfellow without providing any citation. At Tr. 4080, Mr. Stringfellow was asked whether he had ever sent any correspondence to the NRC that could be interpreted orally by obtaining oral information in some side conversation, and Mr. Stringfellow responded that he could not recall a specific instance or whether he has or has not. Tr. 4080 (Stringfellow).

that if more precise terminology had been used, the LER statement would have been correct. See GPC PF 254.

iii. "Hairston's [sic] Participates in 'Call A'" (Int. PF 236-44)

Intervenor states that the major disputed portion of tape 58 "coincides" with Mr. Hairston's participation in Call A. Int. PF 236. This statement is inaccurate. There are some remarks prior to the disputed portion that Georgia Power attributes to Mr. Hairston. See GPC Exh. II-2 at 10-11. Intervenor states that Georgia Power has "continuously denied" that Mr. Hairston participated in this conference call. Int. PF 236 This assertion by Intervenor is also false.^{57/}

In Int. PF 237, referring to the question attributed to Mr. Hairston ("So we didn't have no, didn't have no trips?"), Intervenor proclaims that "the inquiry on this issue should stop here" and "[t]he fact that Mr. Hairston asked the question demonstrates that he must have known about the issue." Int. PF 237 (emphasis in original). That Mr. Hairston may have been informed that there had been some concern is acknowledged in GPC PF 205, but this is hardly the end of the analysis. While Mr. Hairston may have been informed that a concern had been raised, when he later signed the LER he was assured and believed that the LER was true and correct. GPC PF 205.

Intervenor asserts that Mr. Hairston's failure to recollect when "juxtaposed with his excellent memory of many other lesser issues" is not credible. Int. PF 237. Intervenor provides no citation to the record or discussion of Mr. Hairston's memory to support this assertion. Intervenor also asserts that "the evidence" shows that Mr. Hairston "had direct actual knowledge of a

^{57/} Intervenor cites only Georgia Power's 1990 response to OSI questions (Int. Exh. II-95) and "Int. Exh. II-273." The response to the OSI questions predated Georgia Power's access to the pertinent tapes. This matter is discussed in GPC PF 401-18. Georgia Power is not aware of an "Int. Exh. II-273" in this proceeding.

potential material false statement in the COAR and potential material false statement in the LER shows [sic] that he failed to take reasonable steps to ensure no material false statements appeared in the COAR and the LER did not contain a new material false statement." Id. Again, there is no citation to or discussion of the evidence to support this claim. In contrast, the record indicates that Mr. Hairston instructed that the statement in the draft LER be verified and later received assurance that the final LER was accurate. GPC PF 137-38, 191, 205.

Intervenor states that as soon as Mr. Hairston received the "QA data" and saw that it was not what he wanted, he instructed his staff to determine the correct number. Int. PF 238, citing Tr. 3625-34 (Hairston). The testimony cited by Intervenor does not relate to "QA data" but rather to the receipt of draft LER revisions and cover letters prior to the QA Audit. Intervenor argues that Mr. Hairston's quick reaction and the fact that he took immediate steps to resolve the situation is indicative of what should have been done on April 19. Mr. Hairston's tendency to take strong corrective action when he perceived a problem is in fact strong circumstantial evidence that Mr. Hairston did not perceive a problem on April 19. Intervenor adds, "This tends to support intervenor's contention that Birmingham corporate management was well aware of the overstatements made on April 9, 1990." Int. PF 238. The basis for this statement is unfathomable.

Int. PF 239 refers to certain testimony by Messrs. Aufdenkampe, Stringfellow and Shipman as identifying voices and statements. This proposed finding is incomplete and misleading because the witnesses testified they could not hear all of the statements attributed to Mr. McCoy and Mr. Shipman (specifically, they could not hear "I'll testify to that" and "disavow") and also

could not tell whether the "no, not not" words were responding to Mr. Hairston. See GPC PF 218-20.

Intervenor represents, "Mr. Stringfellow testified that, with respect to the tape segment above, prior to Mr. Shipman's statement "no, not not", there is no side conversation occurring. Int. PF 340, citing Tr. 3970. Intervenor misrepresents Mr. Stringfellow's testimony. Mr. Stringfellow testified that he had listened to the tape some time ago, and he could not remember if there was any side conversation before this point. Tr. 3970-71 (Stringfellow).

Purportedly turning to the significance of this tape segment, Intervenor states that "the question that had to be answered during the conference call was whether the trips of the diesel generator, identified with specificity by Mr. Mosbaugh prior to the conference, indicated that the April 9th letter contained a materially false statement and whether it indicated that the diesel start count about to be placed into the LER could no longer be assumed to be accurate." Int. PF 241 (emphasis added). Having phrased the issues to his liking, Intervenor then interprets Mr. Hairston's questions as relating to, and therefore evidencing knowledge and recognition of, these specific issues. Intervenor's phrasing of the issues that "had to be answered" during Call A, however, is unsupported. The participants in Call A were discussing the accuracy of the LER statement, and they changed the language to avoid implying that there had been no failures after March 20. With this change, it was unnecessary to debate during Call A (to resolve the comments on the LER) whether the April 9th letter might be considered materially false if it were interpreted as implying no failures. Rather, it appeared that this possibility was addressed outside of Call A by Mr. McCoy's telephone call to Mr. Brockman determining that the NRC had not misinterpreted

the April 9 letter. Thus, with the change in language, only the accuracy of the count needed to be addressed during Call A.

Intervenor asserts that his interpretation of the meaning of Mr. Hairston's question is logical "because Mr. Hairston had already been notified of the assertion that the April 9th letter was materially false because there had been trips of the diesel after March 20, 1990." Int. PF 241. Intervenor provides no citation for this assertion, which is inconsistent with the evidence in this proceeding. GPC PF 197-205. Moreover, if Mr. Hairston had indeed been informed that there had been trips of the diesel making the April 9 letter materially false, it would not make sense for him to be asking whether there had been any trips. The response that Intervenor attributes to Mr. Shipman ("no, not not") also makes absolutely no sense, particularly if, as Intervenor asserts in Int. PF 241, Mr. Hairston had been notified (presumably by Mr. Shipman) that there had been some trips. Since the participants in Call A had just engaged in a discussion indicating that the reported counts occurred after the sensor calibration and that three trips had occurred before this point (GPC PF 161), there is absolutely no reason why Mr. Shipman would not have explained this understanding to Mr. Hairston.

Intervenor represents that Mr. Stringfellow testified that he believes "the participants" to the conference call would have heard Mr. Hairston's question. Int. PF 242, citing Tr. 3959 (Stringfellow). Mr. Stringfellow testified that he believes he would have heard Mr. Hairston. He expressed no opinion about other participants.

Intervenor refers to his version of the disputed portion of tape 58, which has Mr. McCoy stating, "I'll testify to that" and Mr. Shipman stating "disavow." Intervenor claims that this

constitutes evidence of an intent not to correct the materially false statement in the April 9 letter and to state the same false information in the LER. The disputed portion of tape 58 is addressed in GPC PF 215-226. With respect to Intervenor's dishonest claim that Georgia Power intended to state "the same false information in the LER," Intervenor ignores the differences in the wording (i.e. the change specifically made to avoid implying that there had been no failures).

In Int. PF 244, Intervenor states that even if the disputed portion of tape 58 is inaudible, wrongdoing should be inferred because there was insufficient time to provide an adequate explanation in response to Mr. Hairston's question. Since it is clear that Mr. Mosbaugh's taping could not and did not capture all of the conversations that were occurring in Birmingham, this inference is unreasonable. Intervenor also asserts that "whispering breaks out following Mr. Hairston's question." Int. PF 244. There is no support for this statement. Not one witness, not even Mr. Mosbaugh, testified to hearing any whispering. Intervenor also states that because Mr. McCoy and Mr. Shipman "were sitting next to the highest level managers participating on the conference call, they are the two most logical people to respond to Mr. Hairston's question." Int. PF 244. There is no testimony about where people were sitting during the conference call, and Intervenor cites none. He himself was hundreds of miles away and certainly did not observe the conference room in Birmingham. Finally, tantamount to an admission of the flimsiness of his inferences, Intervenor resorts to a reminder that the burden of proof is on Georgia Power and suggests that to sustain its burden, Georgia Power must explain inaudible statements made over five years ago. Intervenor ignores his own burden of going forward. Georgia Power believes that no sense can be drawn from the disputed inaudible portion of tape, and that portion therefore supports no inference, one way or the other.

iv. "Verification of the Number of Diesel Starts Following the CTP" (Int. PF 245-51)

Int. PF 245-54 contain Mr. Mosbaugh's continued denial of any responsibility for the erroneous statement that was included in the LER. This issue is addressed in GPC PF 227-42. For the reasons discussed below, Mr. Mosbaugh's total denial of responsibility should be rejected.

In Int. PF 245, Mr. Mosbaugh states that in order to count starts, he necessarily needed a starting point and an ending point. He argues that "Corporate management responsible for transmitting the LER knew that Mr. Mosbaugh had no idea what was meant by the term CTP" and also that "Mr. Mosbaugh was not told that the final wording of the LER excluded starts occurring after April 9 up until April 19." Int. PF 245. The argument is disingenuous because Mr. Mosbaugh's testimony clearly and unequivocally indicates that he understood, from Call A, that the final LER statement was intended to refer to a number of consecutive successful starts running up through April 9. See GPC PF 235. The NRC Staff reaches the same conclusion based on its review of the record. See NRC PF 63. The argument is also disingenuous because Mr. Mosbaugh also had a list of starts prepared by Mr. Webb that showed that there was no starting point which would allow one to count 18 consecutive successful starts up to April 9. GPC PF 236, 238. See also NRC PF 63 and 96. Mr. Mosbaugh therefore knew and recognized on April 19 that the basis for the LER statement was incorrect and yet remained silent.

Intervenor repeats this argument in Int. PF 246 and adds that "those managers responsible for concocting the CTP language effectively stalled and prohibited site management from verifying the start count statement." Int. PF 246. This claim is specious because, not only did Mr. Mosbaugh possess the information showing that the statement could not be correct as intended,

but also there was nothing to prevent Mr. Mosbaugh and Mr. Aufdenkampe from calling Mr. McCoy or Mr. Hairston, or instead, reconvening the PRB to review the statement further. See GPC PF 170, 241.

Intervenor asserts that Mr. Shipman and Mr. Stringfellow should reasonably have known that they could neither verify the diesel start count nor ascertain where the CTP ended based on the documentation presented to them, and thus could only rely on Mr. McCoy's and Mr. Bockhold's statements. Int. PF 247. Intervenor conveniently omits the fact that Mr. Aufdenkampe, with Mr. Mosbaugh being present and remaining silent, informed Mr. Shipman and Mr. Stringfellow that data collected at the site tended to support the prior statements. GPC PF 179-80.

In Int. PF 248, Intervenor states, "Mr. Aufdenkampe did maintain, during call "A" that verification of the numbers to be inserted into the LER may be appropriate under circumstances." Id. According to Intervenor, "This suggestion was implicitly rejected by McCoy and Bockhold. . . ." This is a remarkably dishonest portrayal of the statements made during Call A. Mr. Aufdenkampe did not state that verification of the LER numbers might be appropriate. Rather, he informed the participants, "I do have people right now going through -- my people going out through the RO's log." GPC Exh. II-2 at 8. Further, as previously discussed, there was no rejection of that verification effort by anybody. When Mr. McCoy advised that they should use the numbers that had been verified correct by Mr. Cash, he in no way dismissed or terminated the site verification effort. In fact, the verification efforts at the site did continue and the result was later discussed with Mr. Shipman and Mr. Stringfellow. GPC PF 174-85.

In Int. PF 249, Intervenor (without citation) states that "in call 'A' the decision to insert the 'comprehensive test program' language was agreed to and the decision to use Bockhold's count of the number of starts was also agreed upon." This statement ignores the fact that the final language was later provided to Mr. Mosbaugh and Mr. Aufdenkampe not only for their consideration but also so that they could decide whether further PRB review should be conducted. GPC PF 170, 174-84, 241.

Intervenor states that the complete failure of Georgia Power to exercise any form of appropriate management control is exemplified by Mr. Bockhold's OI testimony. Int. PF 250. Mr. Bockhold's actions pertaining to the diesel start statement in the LER were deficient,²⁸ as both Georgia Power and Mr. Bockhold have acknowledged (GPC PF 255), but there is no evidence that this poor performance was an example of a complete failure of the Company to exercise any form of management control. There were clearly management activities that attempted to ensure only accurate information was communicated. See, e.g., GPC PF 252.

v. "Conclusion of Call 'A'" (Int. PF 252-54)

Intervenor states that towards the end of Call A, Mr. Aufdenkampe stated that if the changes discussed were all the changes to be made, a PRB meeting was not needed. According to Intervenor, Mr. Shipman responded "that he could not guarantee whether additional changes would be made." Int. PF 252, citing GPC Exh. II-2 at 17. Intervenor embellishes Mr. Shipman's response. Mr. Shipman responded, "I won't make that guarantee, John," (GPC Exh. II-2 at 17),

²⁸ Characterizing Mr. Bockhold's OI testimony as a statement of his "philosophy" as opposed to the approach he took in that specific instance is hyperbole. Mr. Bockhold stated that he did not verify the LER numbers because they were essentially the same as those provided on April 9. Int. II-13 at 45.

and this response can equally well be interpreted as a statement that Mr. Shipman would not guarantee that a PRB meeting would not be needed to review the revised draft of the LER.

Intervenor states, "that no further PRB action would be required was a foregone conclusion." Int. PF. 253. Intervenor omits that Mr. Aufdenkampe discussed this topic with Mr. Mosbaugh, and Mr. Mosbaugh did nothing to encourage his subordinate to submit the revised draft to a further round of PRB review. GPC Exh. II-2 at 21.

Intervenor proposes that the Board interpret Mr. Aufdenkampe's statement concerning PRB review as one of resignation. Int. PF 254. This suggestion is inappropriate because, while his statements at the end of the day indicate he recognized there could be questions of interpretation, he testified that he believed the LER was accurate when it was submitted. GPC PF 189.

vi. "Call 'B'" (Int. PF 255-60)

Intervenor states that the tape recorded discussion of Call B begins with Mr. Mosbaugh's effort to define the CTP. Int. PF 256. This characterization of the discussion is inaccurate. The conversation begins with a discussion of the explanation that Mr. Bockhold provided during Call A.^{59/} Intervenor states that, despite his repeated efforts to understand how the CTP was defined by Mr. Bockhold, Mr. Aufdenkampe and Mr. Shipman were unable to provide him with this definition. Int. PF 256. This statement is not well-founded. The explanation that was recounted by Mr. Shipman and Mr. Aufdenkampe was consistent with Mr. Bockhold's belief. Compare GPC PF 161 with GPC PF 162. Moreover, Mr. Mosbaugh correctly understood from this discussion

^{59/} Intervenor states that he was handicapped because of this "exclusion" from the portion of "Call A" when Mr. Bockhold apparently discussed the CTP. Int. PF 256 n.74. Perhaps that is why, at the beginning of the recorded portion of Call B, Mr. Shipman summarized Mr. Bockhold's prior explanation.

that Mr. Bockhold intended the count to start after completion of the logic test. GPC Exh. II-2 at 23.

In Int. PF 257, Intervenor states that during Call A, Mr. Aufdenkampe indicated that the data currently available "did not demonstrate that the information Mr. Bockhold had presented at the [April 9] conference was wrong." Mr. Aufdenkampe in fact indicated that the data was supportive. GPC Exh. II-2 at 27. Intervenor states that when Mr. Aufdenkampe began to ask Mr. Mosbaugh if he agreed, Mr. Shipman over-spoke him. Int. PF 257. This excuse for Mr. Mosbaugh's silence is addressed at GPC PF 233.

In Int. PF 258, Intervenor refers to Mr. Aufdenkampe having been "cut off" in the middle of his last comment. There is no support for this statement. The transcript of tape 58 shows that Mr. Aufdenkampe completed not only his comment that the data was supportive but also completed asking Mr. Mosbaugh whether he agreed. GPC Exh. II-2 at 27.

Intervenor states that another reading of the LER statement caused Mr. Mosbaugh to "renew his objection to the language." Int. PF 258. As the quoted transcript segment indicates, Mr. Mosbaugh's remark was that "it sounds like that is kind of establishing the starting point [of the diesel count], you know, at least at the point in time after which we did the UV testing." This was not a particularly forceful statement and did not lead Mr. Shipman to believe that the final LER language was wrong. GPC PF 182.

Intervenor states that "Mr. Mosbaugh's statement presented a significant problem because everyone knew that the diesel experienced a trip after UV testing was completed." Int. PF 259.

Intervenor provides no citation or support for this inaccurate statement. This assertion is not only unsupported but also inaccurate. The UV testing to which Mr. Mosbaugh referred occurred on March 31 for the 1A diesel and on March 27 for the 1B diesel, and there were no trips in the intervals after these dates up through either April 9 or April 19. See GPC Exh. II-15, Attachment A. Intervenor also asserts that at this point Mr. Shipman sidesteps Mr. Mosbaugh's final attempt to define the CTP by "telling Mr. Mosbaugh that they did not need to know the exact definition of the CTP . . . because it had already been explained to the NRC." Int. PF 259. This assertion is gross. Mr. Shipman made no statement that they did not need to know the definition of the CTP. See GPC Exh. II-2 at 28-29.

Referring to Mr. McCoy's telephone call to Mr. Brockman, Intervenor states, "According to Mr. Shipman, Mr. McCoy placed this call because 'we had an issue' with the definition of the CTP and Mr. McCoy resolved that issue by obtaining absolute assurance from Mr. Ken Brockman that he and the IIT team understood the meaning of the CTP." Int. PF 259, citing GPC Exh. II-2 at 28-29. Once more, Intervenor embellishes the recorded statement. Mr. Shipman did not identify the "issue" that prompted Mr. McCoy's call as pertaining to the definition of the comprehensive test program; nor did his description of Mr. Brockman's response specifically pertain to this definition. Rather, Mr. Shipman was referring to the need to make sure the NRC was not misled, and his description of Mr. Brockman's response related to the whether the NRC had understood the basis (as Mr. Bockhold had described it) for the numbers that had been presented at the April 9 presentation in Atlanta.

Without any citation to the transcript of tape 58, Intervenor states that the end of tape 58 reflects that both Mr. Aufdenkampe and Mr. Mosbaugh were troubled with the resolution of their initial concerns regarding material false statements in the COAR and the problems this was causing with the LER. Int. PF 260. The transcript of tape 58 provides no indication that Mr. Aufdenkampe was still troubled at the end of the day. Intervenor does refer to some testimony by Mr. Aufdenkampe that Mr. Mosbaugh had not come to grips with some of his concerns. Tr. 5523. That testimony provides no support for Intervenor's representation that Mr. Aufdenkampe was still troubled, and in fact he provided explicit testimony (not mentioned by Intervenor) to the contrary. See GPC PF 189.

vii. "McCoy's Communication with Brockman" (Int. PF 261-64)

The sections of Intervenor's findings entitled "McCoy's Communication with Brockman" do not in fact contain a single reference to the testimony or evidence related to this communication. See Int. PF 261-64. For a discussion of the testimony and evidence related to this communication, see GPC PF 171-73.

Intervenor refers to an NRC Staff interrogatory response sponsored by Mr. Brockman. Int. PF 261. Intervenor's reference to this response is highly selective, omitting for example Mr. Brockman's statement that Mr. McCoy did confirm that the 1B diesel had experienced problems and failures coming out of maintenance. Mr. Brockman's interrogatory response and deposition testimony (which Intervenor also conveniently fails to mention) is addressed in GPC PF 172-73.

Int. PF 264 refers once again to the April 10 discussion with the IIT. Intervenor's characterization of this discussion, which is addressed at pages 102-05 above, is irrelevant to Mr. McCoy's communication with Mr. Brockman.

viii. "Mr. Swartzwelder Joins Call B" (Int. PF 265-69)

Intervenor refers to a portion of tape 58 involving Mr. Swartzwelder as "striking" in "reflect[ing] a desire on the part of Mr. Shipman to discourage bring [sic] forth information that might controvert the LER." Int. PF 265. The quoted statements are obviously facetious banter and Intervenor's attempt to suggest otherwise is an example of his propensity to fabricate wrongdoing where there is none. Intervenor's attempt to portray these remarks as sinister is all the more remarkable since he never asked Mr. Shipman about this exchange and never suggested such an interpretation to anyone, including as far as we know OI.

In Int. PF 266, citing GPC Exh. II-2 at 31-32, Intervenor states that the conversation turns to the "false statement pertaining to diesel starts." There is no reference to any false statement. Intervenor states that Mr. Shipman terminates this conversation. Int. PF 266. In fact, Mr. Shipman is simply reading the final LER language. There is no concern or comment expressed by anybody in this section of the transcript. Intervenor attributes to Mr. Shipman the statement that the LER "was 'fine-tuned' by Messrs. McDonald, Hairston, and McCoy." Id. (emphasis added). Once more, this is not what the transcript says and there is no other evidence to support this assertion.

In Int. PF 267, Intervenor states that Mr. Aufdenkampe "asks" if further PRB action is needed. Again, Intervenor subtly mischaracterizes the transcript to shift blame to the corporate

office. Mr. Aufdenkampe in fact states, "Bill, unless you tell me different, I'm going to let my PRB people go home." GPC Exh. II-2 at 33. Thus, the transcript shows that Mr. Aufdenkampe stated his decision not to subject the LER to further PRB review and simply provided Mr. Shipman an opportunity to disagree. Mr. Mosbaugh's silence is notable.

Intervenor asserts, "The transcript indicates that, after the call to Mr. Shipman ends, Mr. Mosbaugh was shown a list of starts prepared by Mr. Webb." Int. PF 268. This self-serving statement is unsupported by the transcript and in fact inconsistent with prior references to the data and the count that Mr. Webb derived. See GPC PF 175 n.44. However, even if one assumes, arguendo, that Mr. Mosbaugh first looked at the Webb list at this point (within minutes or a fraction of a minute after his conversation with Mr. Shipman ended), there is no good excuse for Mr. Mosbaugh's failure to have called Mr. Shipman back to inform him of the implications of the list (or indeed Mr. McCoy -- or Mr. Hairston or someone). Not having done so dictated his subsequent behavior with respect to the Webb list. See GPC PF 243-50. See also discussion on pages 23-24 above.

Intervenor also characterizes Mr. Aufdenkampe as having indicated "should the NRC question the definition of the CTP such that there are not enough starts, Georgia Power would say 'we're sorry' and issue a revision to the LER." Int. PF 269, citing GPC Exh. II-2 at 34-35 (emphasis added). Mr. Aufdenkampe made no reference to there not being enough starts. He indicated that should the NRC question the LER statement, "we'll tell them this is what our basis for it was. This is why we get 18." GPC Exh. II-2 at 35. Intervenor omits any mention of this

remark by Mr. Aufdenkampe, which shows that Mr. Aufdenkampe believed there were sufficient starts supporting the LER statement.

O. "June 29, 1990 LER Revision"

i. "Mosbaugh Initiates Revision to LER" (Int. PF 270-277).

Georgia Power and Intervenor basically agree that a draft revision to LER 90-06 was developed between April 20 and May 15, 1990. Compare Int. PF 270-277 with Georgia Power PF 258 through 263. Georgia Power notes, however, that Mr. Mosbaugh portrays himself as expeditiously "getting to the truth" by generating a list of 1B diesel starts after Mr. Webb questioned the original LER's wording. Int. PF 270-272. Mr. Mosbaugh would have the Board find that his proactive data gathering established that there were "problems and failures" since the Site Area Emergency, thus demonstrating that the April 9 letter and April 19 LER were incorrect. However, a full account of the facts is not as flattering as Mr. Mosbaugh suggests.

First, on April 20th the Webb-Odom list was already in Mr. Mosbaugh's possession and demonstrated "problems and failures" since the Site Area Emergency and that the intended message of the LER -- at least 18 consecutive successful starts on the 1B as of April 19 -- was false. GPC PF 236. Mr. Mosbaugh could have raised the issue with his management that very day.

Second, April 20, 1990 was a Friday. Even though he had the Webb list and had been told by Mr. Webb that the LER appeared wrong, it was not until the following Friday, April 27, that Mr. Mosbaugh told Mr. Aufdenkampe of a "high probability" of a problem with the diesel start statement in the LER. Aufdenkampe at 14; GPC Exh. II-32 at 5. Mr. Aufdenkampe advised Mr.

Mosbaugh that he probably should mention the problem to George Bockhold. *Id.* at 8. The following Monday, April 30, apparently after further discussion with Mr. Aufdenkampe (GPC Exh. II-34 at 32: "Maybe I'll make a copy of that for George. I think somebody needs to do something about it."), Mr. Mosbaugh provided a diesel 1B start list to Mr. Bockhold. GPC Exh. II-33. Mr. Mosbaugh apparently instructed Tom Webb to "back out" of data compilation on April 30, and Mr. Webb had done so. GPC Exh. II-35 at 4-5.⁶⁰

By May 2, 1990, Mr. Aufdenkampe had directed Mr. Odom to correct the statements in both the April 9 letter and the original LER. Aufdenkampe at 15; GPC Exh. II-35 at 2. Meanwhile, George Bockhold had requested that Mr. Mosbaugh have his April 30th list validated by Jimmy Paul Cash. GPC Exh. II-107; II-35 at 3. GPC PF 261.

Mr. Mosbaugh took several more days verifying his lists. On May 2, 1990, Mr. Mosbaugh informed Mr. Bockhold that the lists were validated and both the LER and April 9 letter were incorrect. Staff Exh. II-14 (Bound at Tr. 10095). At this point Mr. Bockhold was relying upon Mr. Mosbaugh's determination that this prior correspondence was in error and instructed Mr. Mosbaugh to correct the documents. Tr. 9134; 9138 (Mosbaugh). After meeting with Mr. Bockhold, Mr. Mosbaugh instructed Messrs. Webb and Odom on further correction of the April documents. Staff Exh. II-14 at 6. Mr. Mosbaugh suggested that Messrs. Webb and Odom:

... might just want to use the LER. I like the LER words.
Those words aren't bad. The diesel was subject to a -- or -- you
know, a comprehensive test program was done and, and subsequent

⁶⁰ In his conversations with Messrs. Odom and Webb, Mr. Mosbaugh feigned lack of awareness of the "more than 20 times each" language in the PRB-approved LER. GPC Exh. II-35 at 16 ("Oh, I know why I didn't remember this, because I came to that meeting late"). In actuality, Mr. Mosbaugh tape-recorded portions of the April 19th PRB which resulted in the "more than 20 times each" language conditionally approved by the PRB. GPC Exh. II-1 (Tape 57); GPC PF 141.

to that, you know, there had been X successful starts without problems. . . and just put whatever the right number is. . . . use the word since 'declared operable,' or 'since the undervoltage test,' or 'surveillances performed, been performed X times,' you know . . .

Id. at 7-8. Mr. Mosbaugh's eventual rewrite of the LER (GPC Exh. II-170), like the original LER, states that the control systems for both engines were subjected to a "comprehensive test program." Mr. Mosbaugh's draft LER revision notes that an undervoltage test was performed "after completion of the control logic test sequence. Including the undervoltage test, each has been successfully started eleven times with no start failures." GPC Exh. II-170. At this point Mr. Mosbaugh apparently was not concerned about "problem starts" of the 1B diesel on March 22, 23 and 24 or "successful start" terminology.

ii. "PRB Action Item Dismissed" (Int. PF 278-281).

Intervenor implies that Mr. Bockhold signed off a PRB "action item" improperly. Intervenor PF 281. Specifically, Intervenor observes that the action item to determine how to correct the April 9 letter was signed off on May 24, but the correction was not made until August. The basis for the sign off was addressed at the hearing by Mr. Aufdenkampe. Mr. Aufdenkampe recalls that he was instructed to use the cover letter for the revised LER to correct the April 9 letter and that he discussed this with NRC Resident Inspector Lee Trocine on June 15, 1990. Aufdenkampe at 17. Specifically, Mr. Aufdenkampe recalls talking to Ms. Trocine and asking her the best way to correct the April 9th letter. He asked her if she thought the cover letter to the LER would be appropriate. Ms. Trocine either told him immediately or some time later that such an approach would be acceptable. Tr. 5478 (Aufdenkampe). Consequently, the instructions given to Mr.

Aufdenkampe were verified at some point as appropriate by the NRC.^{61/} The PRB action item was not "dismissed," as Mr. Mosbaugh alleges. Rather, Mr. Aufdenkampe was instructed on a course of action, and the approach was confirmed by an NRC Resident Inspector.

iii. "Delay in Issuing the LER Revision" (Int. PF 282-284).

Intervenor is correct that after the revised LER was provided to the corporate office on or about May 15, 1990 it was not initialed out for execution until May 31, 1990. Int. PF 282. However, contrary to the implication of Intervenor's proposed findings, there was nothing nefarious about this two week delay.^{62/} On June 8, 1990, Mr. Aufdenkampe discussed with Mr. Mosbaugh the delay in issuance of the proposed revision; their conversation was recorded by Mr. Mosbaugh. Aufdenkampe at 17; GPC Exh. II-40 at 6. Mr. Aufdenkampe told Mr. Mosbaugh that he had talked to Mr. Stringfellow several times and Mr. Stringfellow informed Mr. Aufdenkampe that he had not had time to work on the LER revision given other documents he was working on were subject to a time limitation for submission. Id. at 6-7. Mr. Stringfellow testified that his workload was simply too much and the task was given to Mr. Majors. His other assignments included some twenty or so letters with the majority having due dates, including several replies to Notice

^{61/} Contemporaneous documents corroborate Mr. Aufdenkampe's recollection that the LER revision's cover letter was the appropriate approach, and the implementation of the approach in early June 1990. Mr. Majors identified Int. Exh. II-64, pg. 6 (with "okay, G. Bockhold 6/11/90" handwritten) as the original typed cover letter version. Tr. 6283-6285 (Majors). The corresponding handwritten mark up for this version was identified as 92 Project 058121. Both the typed and handwritten versions state that Georgia Power's April 9, 1990 letter (ELV-01516) is being corrected by the LER revision. Tr. 6285 (Majors).

^{62/} It might be observed that the period from April 20 through May 8, expended at the site to develop a proposed LER revision, was no more inordinate.

of Violations. Tr. 4043 (Stringfellow). Consequently, the delay between May 15th and May 31st was a function of correspondence prioritization.^{63/}

iv. "Mr. Hairston Directs a QA Audit" (Int. PF 285-298).

The record is clear that Mr. Hairston tasked the SAER audit group to determine what the correct numbers should have been in the LER. Tr. 10840 (Ajluni); Hairston at 12; Tr. 3631 (Hairston); Frederick at 4. Intervenor also contends that Mr. Frederick was specifically tasked to determine "why the discrepancy existed." Int. PF 287. Indeed, Mr. Hairston told an SAER representative at the site (his supervisor, who would have been Mr. Frederick, was not available) that he wanted to know what the correct number was and why the site was having trouble counting starts. Hairston at 12; Tr. 3631 (Hairston). It appears that, when the instructions were relayed to Mr. Frederick, he did not understand he was tasked with determining the "root cause" of the LER error. NRC PF 142; Tr. 10840 (Ajluni). Intervenor has simply mischaracterized an excerpt from a transcript of Tape 160 (Staff Exh. II-16 (revised) at 1: "I'm supposed to come up with why the discrepancy exists.") In the same conversation, Mr. Frederick further explained he understood that Mr. Hairston was looking for an answer to the question "if we did everything we were supposed to do by our procedures, why would a reasonable person not be able to add the numbers up, more than one reasonable person, be able to not add the numbers up and come out with the same answer." Int. Exh. II-203 at 4.

^{63/} After June 8, Georgia Power decided to rewrite portions of the LER not related to the start count in the original LER and to perform the SAER audit on diesel starts. The audit was not completed until June 29th. Mr. Mosbaugh concedes that, while these events had the effect of delaying the LER revision, he is not sure if these actions were intended to delay the LER revision submittal. Tr. 9712-9713. He also concedes that Mr. Hairston, upon being provided numbers for the LER revision over time, correctly concluded that Georgia Power needed to bring in somebody else to count starts. Tr. 10142-10144.

Intervenor also maintains that Mr. Frederick, and apparently the other SAER auditor, reviewed the "control room log" during the audit and were aware that the "control room log" was not accurate. Since the final audit report does not mention the "control room log," Intervenor proclaims the audit to be suspect and concludes that references to the control log were "expunged" from the SAER audit report. Int. PF 288-289. This new allegation is quite remarkable. It is unclear whether Mr. Frederick's reference to the control room log meant the Unit Control Log or the Shift Supervisor Log, both of which were "control room logs." Many control logs were under review ("all the logs that supposedly exist on it" including the diesel start log). Staff Exh. II-16 at 2, 1.12. Moreover, even if the auditors examined the Unit Control Log, there is no basis for Intervenor's inference that the auditors determined this log alone could provide an accurate count. Furthermore, the more likely inference is that no complete count could be obtained from the control room logs alone. Even Mr. Mosbaugh on June 11 observed that there was "a little error" in the operations logs. GPC Exh. II-42 at 29. See also Int. Exh. II-256 at 11 (Interview by Lee Glenn of Allen Mosbaugh, 6/21/90: "In [the LER] a number was included on successful starts which was later determined to be incorrect. The problem related to operations logs -- they were not easily understood and they did not document all the starts. Starts were made and not logged . . .")

Finally, the Intervenor is simply wrong on his "expunged" speculation. The audit report does mention the Unit Control Log expressly, contrary to Intervenor's proposed findings. GPC Exh. II-15 at 3, Special QA Audit at 2, Sections IA & B. Mr. Mosely, the lead auditor, looked at the Unit Control Log and elected not to use the log because it was not complete. Tr. 4188-4189 (Frederick). The final audit report noted that the Unit Control Log was not as complete as the

other sources reviewed (i.e. the compilation of test data sheets and diesel start log). GPC Exh. II-15 at 3, Special QA Audit at 2, Section IB. This is a correct conclusion. Mr. Mosbaugh's April 30 list also demonstrated missing starts from the Control Log. GPC Exh. II-33 at 2.

Intervenor next argues that the SAER audit was "grossly inadequate" and that this inadequacy is evidence that Georgia Power was either not highly concerned about finding the root cause of the April correspondence errors or that the April errors were willful. Int. PF 292-298.^{64/} As an initial matter, any limitations or weakness on the audit is not patent, and certainly were not communicated to Messrs. McCoy and Hairston.

Furthermore, the Board simply cannot accept Intervenor's characterization of "gross inadequacy" of the audit without examining the actual actions taken in conducting the audit. There were logical and valid reasons why Mr. Cash and Mr. Bockhold were not extensively interviewed (Int. PF 292-293), why the Unit Control Log was not used in compiling the audit's tables (Int. PF 293), and why the auditors never requested a list from Mr. Cash (Int. PF 296).

The SAER auditors' task, foremost, was to get the correct start count.^{65/} No evidence exists that Mr. Frederick or the lead auditor, Mr. Mosely, were tasked to "recreate" the events leading to the prior April statements; this was an audit, not an investigation of individuals. The methods chosen by the auditors were effective for the assigned task of documenting all diesel

^{64/} Intervenor, in passing, makes the assertion that the SAER failed to determine the correct start count. Int. PF 298. No evidence was presented to the Board that the SAER audit inaccurately determined the number of "successful starts" after the completion of a "comprehensive test program" (as defined in the SAER report) for the specified time frame.

^{65/} In fact, Mr. Ajluni testified that this was the full extent of his tasking of the SAER group. Tr. 10840 (Ajluni).

starts. The audit determined that the number of successful starts specified in the April 19 LER was incorrect (Special QA Audit, pg. 3, § V(A)) and also determined "correct numbers." GPC Exh. II-15 at 1; GPC PF 271-73.

The auditor thought that it would be inappropriate to reconstruct the various prior "counts" in April and May. The auditors simply did not want to review some prior effort. Rather, the auditors wanted to generate their own accurate, complete and documented numbers. To reconstruct earlier reviews would bias the audit one way or another and, therefore, Mr. Frederick believed a better approach was an independently-developed number and then after-the-fact comparison of the SAER number with prior numbers. Frederick at 9. NRC Staff witness Mr. Hood considered this to be credible explanation for the approach taken by the SAER group. Tr. 14927 (Hood). This explanation of independence is not pretextual. On June 12, 1990, Mr. Frederick explained his approach to Mr. Mosbaugh. Int. Exh. II-293 at 5 states, in pertinent part:

... and we're not starting with somebody else's data. We're generating our own, so that we don't sit around trying to justify somebody else's numbers, because that biases you one way or the other. It's better to go with your own objective number and then sit down and compare the two and figure out why they don't match... I think we're going to find out that we -- even though we were starting it -- started it and run it for three minutes and started it and run it for five minutes and they were ten minutes apart, the control room still should have filled out a sheet every time it was started up and they probably didn't.

Consequently, the auditor's lack of scrutiny of the specific efforts of Messrs. Cash and Bockhold (Int. PF 292) was reasonably founded on a desire for independence.⁶⁶

⁶⁶ In Int. PF 292, fn. 80, Intervenor suggests that Georgia Power never reviewed Mr. Cash's actions. This is not true. Tr. 10781 (Ajluni); Int. Exh. II-120.

Mr. Frederick thought that the underlying cause of the start count error went beyond somebody making a mistake. Based on his training, he understood that underlying problems should be identified which caused someone who typically is a reasonable, well-trained individual to make an error. Tr. 4182; 4185 (Frederick). Because of the lack of reliable documentation in one location, he could not conceive how anyone accurately counted starts because no one knew where all the starts were documented. On the other hand, if the diesel start log had been up-to-date, individuals would not have to go to the completion sheets or the control room logs. Frederick at 11. "Therefore, no single source document was readily available for determining the results of diesel start attempts following the Site Area Emergency March 20, 1990, and prior to submittal of the LER April 19, 1990." GPC Exh. II-15 at 4.

v. "Differences in Prior Drafts" (Int. PF 299-302).

Intervenor says that "it is incomprehensible" that various letters with extremely divergent explanations for the errors in the April 9 correspondence did not cause concern to Georgia Power's management. Int. PF 302. What Intervenor overlooks is Mr. Hairston's actual management actions. As explained by Mr. Hairston, several suggested revisions of the cover letter were prepared by his staff and he was not satisfied with them. So he told his staff that an explanation should be included in the cover letter which addressed why the revision to the LER was written in a different context: different time frames and different kinds of starts being counted. He also wanted to try to explain what the number in the April 19 LER would have been had Georgia Power stated everything in the LER correctly. Hairston at 15. No negative inferences can be reasonably drawn from the fact that different explanations were rejected. See, GPC PF 306-308.

vi. "Assignment of Responsibility to Mr. Majors" (Int. PF 303-316).

Intervenor previously argued that the assignment of Mr. Majors somehow evidenced wrongdoing. See GPC PF 302-305. Now, however, he points only to Mr. Majors' failure to expressly admit that the June 29 letter is false and misleading as reflective of the licensee's lack of candor in its communications with the NRC. Int. PF 308. Compare Mosbaugh at 56, ll. 11-15, with Int. PF 303-316. Mr. Majors' testimony simply reflected his limited involvement in these events and lack of knowledge concerning the April statements. He also had little technical input into the cover letter. Tr. 3658 (Hairston). In any event, Georgia Power has admitted that the June 29th letter failed to meet standards required by NRC regulations. Int. Exh. II-105, Enclosure 3, pg. 2-3; GPC PF 285.

vii. Implications of the PRB Review (Int. PF 317-332).

Intervenor's argument in this section is essentially that the PRB members failed to resolve Mr. Mosbaugh's concern "probably" due to the fact that they knew Mr. Hairston and Mr. McCoy were responsible for portions of the June 29 cover letter. Int. PF 317 and 332. Intervenor's suggestion that no one would question language prepared by Mr. McCoy or Mr. Hairston is not supported by the evidence. On one hand, the taped conversations on June 29 reflect some deference to Mr. Hairston by Mr. Horton (GPC Exh. II-44 at 1-2) Int. PF 318. On the other hand, Mr. Majors, who identified the involvement of Messrs. McCoy and Hairston in the cover letter, expressly solicited comments on any inaccuracy in the letter:

Majors: Right. Now, that's a Ken McCoy additional sentence that has been blessed by George [Hairston]. So obviously if there's a problem with it, George would want to know about it.

Greene: Sure. The discrepancy is attributable to diesel start record keeping practices. What do you mean by that?

Majors: Okay. That's another George and Ken McCoy designed sentence, and their referring there to this audit report trying to summarize . . . I'm trying to find . . . the thing, the section of, especially in the audit report where it says no specific cause for the error in the LER . . .

GPC Exh. II-44 at 21 (emphasis supplied).

Moreover, the SAER audit findings as a basis for the cover letter was much more extensively discussed in these conversations than who had originated what sentence. The following excerpts highlight the emphasis, and reliance upon, the audit.

GPC Exh. II-44 at 20, l. 38: "The audit report, if you look at page 3 of the audit report . . ."

Id. at 21, l. 24-32: "In the audit report where it says . . ."

Id. at 22, l. 16: "We had the QA report, we counted off, and show exactly what we're saying, 12 and 16."

Id. at 22, l. 27: "It discusses the fact that they go to the engineering log and then it talks about the fact that there've been additional tests performed according to Procedure 14380. . . ."

Id. at 23, l. 45: "and what the QA audit report says is that part of that was apparently due to the fact that, you know, you do tests but you keep separate logs, different kind of logs . . ."

Id. at 24, 1.2: (Reading from the report) "Therefore, no single source document was readily available for determining the results of the diesel start attempts following the site area emergency and prior to the submittal of the LER."

Finally, Intervenor now acknowledges Mr. Greene's continued questioning of Mr. Mosbaugh for information and suggested revisions to the cover letter. Int. PF 327. Based on the above, the Board should find that there was not undue deference to the origination of the cover letter's sentences.

Intervenor states that it is "obvious" that Mr. Mosbaugh felt he was not being heard, and it was therefore futile for him to continue his conversation with the PRB members. Int. PF 328. As an apparent justification, Intervenor asserts that he had been relieved of most, if not all, of his authority and, therefore, others may not have taken his concerns seriously. Int. PF 328. With respect to his views not being heard, the Board should consider Int. PF 327, which adopts some, but not all, of GPC PF 331. Mr. Greene solicited Mr. Mosbaugh's views. He asked for suggested changes. He asked for Mr. Mosbaugh to identify a root cause. Could it be that Mr. Mosbaugh simply did not want to answer because he (and of the participants only he) knew about the Webb list basis for the LER's verification? He could have said, "Aufdenkampe and I used Tom's list and told Shipman and Stringfellow that we had enough starts after the test program. But we didn't adequately define the comprehensive test program." Moreover, Mr. Mosbaugh may have been temporarily in a position of lesser authority (working directly for the Plant General Manager pending decisions on SRO school clearly has some inherent authority), but he retained his

responsibilities as an employee. The Board could conclude that his concerns were not resolved, in part, due to his own failure to identify his contribution to the LER error.

Intervenor also argues that obviously, if the specific log used in developing a start count was adequate to get an accurate count, then the log was not the problem. Int. PF 331. However, none of the participants in the June 29 discussions knew the specific starts that were the basis for the April count numbers.^{67/} While it is true that, in retrospect, there are no "problem starts" among the starts omitted from the control room logs for a definable count period, this fact was not known to the participants on June 29th. Moreover, the "adequacy" of the control room logs, as well demonstrated by the Staff, is premised on the assumption that any starts omitted from the logs did not experience "problems or failures". While this may be the case for the March 20 - April 9 period, it would be imprudent to rely upon the control room logs alone and assume any omitted starts were "successful" for all cases.

viii. "The Final Version of the June 29 LER Revision" (Int. PF 333-338).

Intervenor selectively highlights statements made by Mr. Paul Rushton in a conversation on June 8, 1990. Specifically, Intervenor focuses on Mr. Rushton's statement that he was "looking for a good story." Int. PF 335. See, also, Int. PF 300-301. The actual transcript of the June 8 conversation indicates no desire by Mr. Rushton to determine anything but the truth. Mr. Rushton sought out Mr. Mosbaugh because Tom Greene had told Mr. Rushton that Mr. Mosbaugh had the background on the LER revision. GPC Exh. II-40 at 2; Staff Exh. II-35 at 1. Mr.

^{67/} In fact, no party to this proceeding has proposed Findings which correlate specific starts between March 20 and April 9 with the "18" and "19" successful starts included in Georgia Power's April 9 presentation. The record only establishes that certain starts with "problems or failures" were included in these 1B diesel totals.

Rushton's focus was on the change in the number of starts. He believed that the difference was associated with a tally from control room logs as compared to the completed Diesel Start Log. Id. Mr. Mosbaugh, in response, informed Mr. Rushton that he knows "some of the history because I was in the PRB when we approved the revision to the LER . . . I believe that mistakes were made in the previous numbers . . . and that probably started with George Bockhold in his presentation to the NRC." GPC Exh. II-40 at 4; Staff Exh. II-35 at 2. Mr. Mosbaugh goes on to suggest that Mr. Rushton can make a "comparison between what was originally developed by Bockhold and operations [Cash] to what the data sheets and the control logs say." GPC Exh. II-40 at 5; Staff Exh. II-35 at 3. Shortly after this call, Mr. Rushton and Mr. Bailey called Mr. Aufdenkampe.⁶⁸ Id. at 6. Mr. Bailey explained that the corporate office was having some difficulty understanding the diesel generator start numbers and questions who has "the exact story on that issue." Mr. Aufdenkampe provided his opinion that "the real bottom line" was that management decided to rely on George Bockhold's representation that they were good numbers because they used a specific start point. Staff Exh. II-35 at 7.⁶⁹ Mr. Bailey was also informed that the revised LER numbers were based on data start sheets and a review of operators' logs so that "everything" was picked up. Staff Exh. II-35 at 11. Mr. Bailey observed that it doesn't look like "there is a good story other than we just . . . screwed up there." Mr. Rushton indicated that he was looking for facts that would not make "us all look like a bunch of dummies but sounds like we

⁶⁸ In his earlier telephone discussion with Mr. Rushton, Mr. Mosbaugh used Mr. Aufdenkampe's phone and instructed Mr. Aufdenkampe to remain quiet. ["Shhh".] Staff Exh. II-35 at 1. Note, also, Mr. Mosbaugh's minimization of his knowledge surrounding the original LER's finalization, and emphasis on actions by Messrs. Cash and Bockhold.

⁶⁹ The Board will note that Mr. Aufdenkampe identified Messrs. Shipman, Bockhold, Bailey, Aufdenkampe and Mosbaugh as individuals on "that phone call to put those numbers in." Neither Mr. McCoy or Mr. Hairston are identified as participating on the call.

were a bunch of dummies." Neither Mr. Rushton nor Mr. Bailey suggested that the NRC should be provided anything other than "the exact story," and Mr. Rushton indicates that he is better equipped to discuss the original LER error with Mr. Hairston. Staff Exh. II-35 at 12-13. In sum, Mr. Rushton was looking for operative facts, not fiction.

ix. "Communications with the NRC" (Int. PF 339-346).

Intervenor would have the Board conclude that Georgia Power has not proven that the NRC was informed in late May to mid-June, 1990 that the April 19 LER was inaccurate. Int. PF 346. The NRC Staff concurs that Mr. Hairston called Mr. Ebnetter twice, Mr. McCoy called Mr. Brockman on one occasion, and Mr. Shipman called Mr. Brockman on another. See, NRC PF 116, 117; GPC PF 265-266 and 270. Intervenor also "suggests" (Int. PF 345) that Mr. McCoy never called Mr. Brockman, because Georgia Power stated in its 2.206 petition response that Mr. McCoy called Mr. Brockman but "it is documented in Int. [Exh.] II-48 . . . that he did not make the call but believed that Mr. Shipman did." This argument is specious because, as Intervenor is well aware, there were at least two calls to Mr. Brockman about the LER's error -- one on May 24 by Mr. McCoy and one on June 14th by Mr. Shipman demonstrated by contemporaneous documentation and testimony. Intervenor also questions whether Mr. Shipman's calls to Mr. Brockman were of sufficient duration to convey information. All this signifies is that Mr. Brockman may have had to return Mr. Shipman's calls, a possibility acknowledged by Intervenor. Tr. 9788-89 (Mosbaugh). Further, Mr. Aufdenkampe informed the Resident Inspector. Aufdenkampe at 17-18; NRC PF 118. The June 15, 1990 transcribed conversation between Mr. Aufdenkampe and Mr. Mosbaugh confirms that Mr. Aufdenkampe briefed the Resident, that the Resident

talked to Mr. Brockman, and that Mr. Aufdenkampe told them that Georgia Power had an incorrect statement in the LER. GPC Exh. II-41. The evidence, therefore, is overwhelming that the NRC was informed during this period that the LER was incorrect. Intervenor's Proposed Findings in this regard show a total lack of balance as requested by the Board, and a continued propensity to "infer" facts from speculation. The reason is clear: informing the NRC of the LER error during this time frame negates Intervenor's central inferences of "cover-up" and "delay" in submitting the revised LER and demonstrates openness and honesty in communications with the NRC.

x. "The Inaccuracy or Incompleteness of the June 29th Cover Letter" (Int. PF 347-49).

In Int. PFs 347-349, Intervenor generally adopts GPC PFs 284-286. The Intervenor also adds his view that Georgia Power's continued belief that record-keeping practices contributed to the LER's error "is, at best, a sign of its inability to realize its mistakes." Int. PF 349.⁷⁰ Intervenor fails to address GPC PFs 287-291 and the basis for Georgia Power's belief. Furthermore, the Staff observes that record-keeping practices would have made the information easier to retrieve relative to the April 9 effort of Mr. Cash (NRC PF 136), but does not expressly address the impact of record-keeping practices on the development and verification of the April 19 LER. Therefore, GPC PFs 288 and 290 should be adopted by the Board.

⁷⁰ Intervenor also incorrectly asserts that Georgia Power is not logical in asserting that record-keeping practices are "the only cause of the [LER] error." Int. PF 349. Georgia Power has recognized other causes. See GPC PF 285.

xi. "Willfulness" (Int. PF 350-351).

Simplified, Intervenor points to two purported facts on which he bases his finding that the June 29 revision to the LER was willfully inaccurate or incomplete: (1) Mr. Hairston and Mr. McCoy personally wrote the last sentence in the letter and that this was known to the PRB, and (2) the SAER audit was grossly inadequate. Int. PF 350-351. With respect to the first reason, there is no evidence that Mr. Hairston or Mr. McCoy knew that the statements in the June 29 letter were inaccurate. GPC PF 344; NRC PF 146. With respect to the adequacy of the audit, it failed to identify the multiple reasons for the April 9 letter and April 19 LER errors. Nevertheless, as discussed above and in GPC PF 314, this failure was not due to an unreasonable or reckless approach for the assignment, an incorrect premise that control room logs were incomplete, or an inability to achieve the assigned goal of determining (and documenting) the diesel starts for the relevant time frame.

With respect to the laundry list of factors listed in Int. PF 351, the following cross-references may assist the Board:

- 1) Cash List - GPC PF 300-301;
- 2) Assignment of Majors - GPC PF 302-305;
- 3) Multiple Cover Letters - GPC PF 305-308 and supra, V.O. v.;
- 4) Narrow scope audit - GPC PF 314;
- 5) Adequacy of SAER audit - V.O. iv, supra;

- 6) Change in audit scope, V.O.iv, supra,
- 7) Mr. Mosbaugh's statements to the PRB - GPC PF 325-331 and IV.A.ix, supra

P. "On Site Inspection ('OSI')"²¹¹ (Int. PF 352-356).

Intervenor's PF 352 states "Messrs. Bockhold and McCoy displayed an adversarial attitude toward the OSI, in August of 1990. Mosbaugh at 65, Int. II-76, Int. II-76A." During the July 7, 1995 hearing, Georgia Power and the Staff objected (out of time) to the introduction of Intervenor's allegation that during the OSI inspection Georgia Power had a "closed, deceptive attitude toward the NRC." For example, Tape 259 (Int. Exh. 76) includes a discussion among Messrs. McCoy, Bockhold and others concerning certain issues raised by the OSI team that were not related to diesel generator statements. There is nothing about either tape 259 or Tape 246 (Int. Exh. 76A) which the Board should conclude evidences a closed, deceptive attitude. The discussion on Tape 259 indicates that Messrs. McCoy and Bockhold had discussed a situation with the NRC OSI inspectors with respect to plant shutdowns pursuant to Tech. Spec. § 3.0.3. The NRC inspectors were apparently upset that one operator told them nothing needed to be done for the first 3 hours. They related to the group how this was not true because there were certain notifications that would be made that everyone at the plant is aware of. Apparently, when Mr. McCoy attempted to explain this to the OSI inspector(s), the inspector didn't believe him. There

²¹¹ Although Intervenor's Final Statement of Fact, at 202, refers to the OSI as the "On Site Inspection," the term OSI actually refers to the NRC Operational Safety Inspection, conducted from August 6, 1990 to August 17, 1990.

is nothing about this discussion that evidences an intent to mislead the NRC and the Board should reject Intervenor's suggestion that Georgia Power's approach to the OSI inspection was improper.

Int. Exh. II-76A is a transcript of a segment of Tape 246 made on August 13, 1990.

When this tape was admitted by the Board, Judge Bloch stated that its only evidentiary value [to Intervenor] would be the sentence that deals with badgering. Tr. 3318-19. That sentence reads "[t]hey [OI] will badger you and try to push you all over the place." Mr. Bockhold was referring to OI investigators who would be assisting OSI personnel during on the record interviews of Plant Vogtle personnel during the inspection. There is nothing sinister about this statement. Mr. Bockhold was simply cautioning his personnel to be careful how they respond to questions from these investigators. His very next statement on the tape is "[b]e honest and don't speculate." The Board should not accept Intervenor's characterization that this demonstrates an adversarial attitude on the part of Mr. Bockhold toward the NRC. Even if the Board views it as adversarial, given that the comment was made in the context of an on the record interview by OI personnel -- whose charter it is to investigate willful wrongdoing -- it is not unreasonable for a plant manager to advise his staff to be cautious about their on the record statements. Based on the above, the Board should reject Intervenor's PF 352.

Intervenor states that then-Georgia Power Executive Vice President Pat McDonald expressed "indignation" at the OSI exit when NRC questioned the accuracy of information provided by Vogtle employees. Int. PF 354. Intervenor described this further in Int. PF 356, as follows:

In August of 1990 the OSI received verbal information from GPC that was questionable. The agency reviewed the information, held an enforcement conference, and concluded that there were no issues with it. Int. II-83, Tr. 15360-61 (Reyes). Nonetheless, this is

further evidence that a culture exists, in all aspects of Georgia Power, that allows for inaccurate information to be provided to the NRC.

It seems odd that Intervenor would criticize Georgia Power for being upset after NRC questioned the integrity of its personnel, especially when, upon closer inspection, the NRC later determined that it was wrong. Georgia Power does not dispute that mistakes were made by its personnel in providing information to the NRC. See, e.g., GPC PF 398-400, 413; NRC PF 149-50, 166. However, Intervenor has cited no credible evidence to indicate that Georgia Power personnel intentionally misled the NRC in any way.

Q. "White Paper" (Int. PF 357-376).

The NRC Staff succinctly distills Intervenor's assertions related to Georgia Power's August 1990 "white papers" which were provided to the NRC OSI team. NRC PF 163. They are addressed seriatim:

The Exclusion of Messrs. Hairston and McCoy from the Listed Participants.

Intervenor argues that the level of participation and degree of responsibility in drafting and submitting the LER, combined with the obvious intellect of the participants in the April 19, 1990 discussions, is sufficient evidence to conclude that the omission of Mr. McCoy and Mr. Hairston from the "white papers" was deliberate, designed "to cover up management involvement and culpability for the inclusion of material false statements to the LER" (Int. PF 373).

Intervenor ignores three irrefutable facts concerning the development of the "white papers." As demonstrated by Mr. Mosbaugh's tape of the August 15, 1990 meeting in which the

participants in telephone conversations were discussed, (1) no one identified Mr. Hairston as a participant, (2) neither Mr. Bockhold nor Mr. Aufdenkampe, both of whom expressed a relatively strong recollection of the April 19 conversations, identified Mr. McCoy, and (3) the participants appear not to attempt to differentiate between the telephone calls which Mr. Mosbaugh now designates as "Call A" and "Call B." See, generally, GPC II-122. This tape transcript demonstrates the genuine efforts of individuals to recall historic conversations and who, understandably, not having perfect recall. NRC PF 166; GPC PF 412-414.

A careful review of the transcribed conversation, viewed objectively, shows the following:

(1) Mr. Frederick had been told that the words "subsequent to the test program" were developed in a telephone conversation between two groups, one in the corporate office and one at the plant site. GPC II-22 at 8.

(2) Mr. Bockhold confirmed that the telephone conversation occurred between a group in Ken McCoy's office and George Bockhold. Id.

(3) Mr. Shipman and Mr. McCoy confirmed George Bockhold's recollection. GPC II-122 at 9.

(4) Mr. Aufdenkampe is the first to attempt to identify the participants: "that's when we had a phone call Friday night with you [Bockhold] and Allen and me and Bill Shipman and, I think, Paul Rushton and Jim Bailey. We talked on Friday night trying to iron out the LER." Id. at 11 (emphasis supplied).

(5) Mr. Bockhold stated that he did not remember all the people on the phone call as identified by Mr. Aufdenkampe. Id.

(6) Mr. Bockhold confirmed aspects of Mr. Aufdenkampe's recollections: "Friday evening phone call with John, and Allen, and who else and Bill Shipman." Id. at 12.

(7) Mr. Aufdenkampe reiterated Bill Shipman's participation. Mr. Aufdenkampe appears to identify Jim Bailey as a participant, but may (the words are inaudible) immediately thereafter exclude or otherwise qualify his recollection of Mr. Bailey as a participant. Id. at 12.

(8) Mr. Bockhold confirmed that Mr. Aufdenkampe had identified the particular phone call which he remembers. Id. at 13.

(9) Mr. Domby asks if anybody disagrees with Mr. Aufdenkampe's recollection concerning who were the participants on the phone call. Id. at 14. Mr. Aufdenkampe states that he knows "it was definitely me and Allen, and George [Bockhold] and Bill Shipman." Id. at 14 (emphasis supplied).

(10) Mr. Aufdenkampe asked Mr. Shipman whether he remembers who else was with Shipman on that Friday phone call. Mr. Shipman said that he did not remember, but he knew there were several participants in Birmingham. Id. at 14. He then identified Lewis Ward, Paul Rushton, Jim Bailey, and Jack Stringfellow as

being "involved" but it is unclear whether he is identifying them as participants on the phone call or simply as involved with the LER's review. Id. at 14-15.

When the specific issue of the participants on "the" phone call was pursued, no one identified either Mr. McCoy or Mr. Hairston. Mr. Aufdenkampe and Mr. Bockhold expressed firm recollections, and Mr. Shipman stated that he did not remember specifically who was on the phone call in Birmingham with him.^{72/}

Intervenor would have the Board review Mr. Shipman's inclusive statement "we had practically everybody up here and practically everybody down there that was available on the phone call" to be "the final statement on the matter," and that Mr. Bockhold and Mr. McCoy "signaled their agreement" with this "final statement." Int. PF 371, citing GPC Exh. II-122 at 14-15. As with so many times in his pleadings, Intervenor conveniently omits highly material information Mr. Shipman's original response was "No, I don't remember, but I know there were several of us . . ." This statement immediately preceded Intervenor's excerpt selection. Moreover, Mr. Bockhold and Mr. McCoy signaled no "agreement" with Mr. Shipman. Rather, they responded to Mr. Frederick's statements (i.e., recognizing) that he had enough information to describe the conversation and that he would talk to Jim Bailey about another question. GPC II-122 at 15.

^{72/} With respect to Messrs. Ward, Rushton and Bailey, Intervenor does not now maintain that they participated in "the" conference call. Compare, Int. PF 362 ("no less than two participants) with Mosbaugh at 108. However, Intervenor represents that Mr. Bailey did not object to his name being included in Mr. Shipman's list. Int. PF 370, n. 87. The actual transcript reflects that someone did respond to Mr. Shipman's statement concerning the participation of Ward, Rushton and Bailey, but the response is inaudible. In addition, Mr. Frederick was going to talk to Mr. Bailey on other aspects of the white paper. GPC Exh. II-122 at 7 and 15. The strong possibility, then, exists that Mr. Bailey or others questioned the inclusion of their names in the white papers. Given the location of Mr. Mosbaugh's tape recorder, he clearly did not identify either Mr. Hairston or Mr. McCoy as a participant.

In attempting to paint a picture that Mr. Shipman held a firmer recollection in August 1990 than he voiced, Intervenor represents that Mr. Shipman "admitted" that he knew in that time frame Messrs. McCoy and Hairston participated in "the" April 19 conference call. Int. PF 366. Intervenor cites Tr. 10996, but fails to place Mr. Shipman's testimony in context. Indeed, Judge Bloch understood Mr. Shipman's testimony as "you said you didn't know whether at that time (August of 1990) you knew that those two people were on the call." Tr. 10997. Mr. Shipman further explained ". . . I don't know if I did not recall that they were in the conversation or if I did not pick up on the fact that their participation was omitted from this white paper. I simply have no recollection as to how I dealt with that issue at that time (in August 1990)." Tr. 10997. Judge Bloch understood Mr. Shipman as saying that "he had personal knowledge [due to his participation on the call] but he doesn't think he -- he either didn't remember it or he didn't notice that they were omitted [in August 1990]." Tr. 10998. Mr. Shipman confirmed his position on the second transcript page cited by Intervenor: "I knew both of those gentlemen were involved in the telephone conversation [due to personal knowledge in April] and I don't know, again, I do not know whether in August 1990 I did not recall that or whether I did not note that they were not listed. But I did know that they were participants in the phone call." Tr. 10999 (Shipman). In any event, Mr. Shipman's contemporaneous August 1990 statement, "no, I don't remember . . .," demonstrates that in August, 1990 he indicated to others a lack of specific recollection, and did not identify their participation, suggesting that he did not recall it.^{23/}

^{23/} Similarly, Mr. McDonald testified in 1993 that, when asked, Mr. Shipman did not recall Mr. Hairston being on "the very last call." See Section V.W.iii, infra. On the other hand, Mr. Shipman does not believe there was a time when he did not recall Mr. Hairston walking into the fourth floor conference room and participating on an April 19th afternoon conference call. Tr. 11319, 11322.

Additional Allegations of False Statements.

In his Proposed Findings, Intervenor, for the first time, identifies additional "material false statements" associated with the white paper: (1) Question 3.2 -- "All revisions of the LER were reviewed by the PRB;" (Int. PF 372), (2) Question 1 -- "Burr and Bockhold sat together in Mr. Bockhold's office and worked on the diesel testing slide;"²⁴ (Int. PF 375), (3) Question 2 -- Mr. Burr is excluded from the list of individuals who prepared the Confirmation of Action Response Letter. Int. 3767. These new allegations need little discussion for disposal. First, Intervenor never identified these statements as matters in controversy, either in his original Amended Petition, in his Interrogatory Responses or in his testimony. Since Intervenor failed to alert any party of the need to address these statements, his attempt to inject them in Findings is untimely. Second, in developing the white paper George Frederick apparently had reviewed the PRB minutes and determined that the phrase "subsequent to the test program" was included after the PRB meeting on April 18th. (GPC Exh. II-122 at 8. "Our records show that . . . ") See, also, GPC Exh. II-28 at 2. The Plant Review Board meeting minutes showed final PRB approval on April 19th. GPC Exh. II-29 at 3 (pg. 2 of 3, item D). Therefore, although the complete record in this proceeding demonstrates that the response to Question 3.2. taken literally is inaccurate, Georgia Power's records indicated that the PRB had reviewed and approved the final draft of the LER. Tape 58 -- unavailable to those preparing the white paper in August 1990 -- reveals that when the test program wording was added on April 19th it was not considered a substantive change and no further PRB review was deemed necessary. See, GPC Exh. II-2 at 18 and 33.

²⁴ This is another liberty taken by the Intervenor. The white paper states that the diesel testing slide was prepared by "G. Bockhold, Jr., J. P. Cash, and K. Burr working as a group." Neither it nor the contemporaneous tape refer to the three as sitting together in Mr. Bockhold's office.

With respect to Mr. Cash's and Burr's involvement in the transparency, the white paper was faithful to Mr. Bockhold's recollection. GPC Exh. II-122 at 6: "I worked with Jimmy Paul Cash and Ken Burr. The three of us worked on it. I might have put the bullets down and then got Ken Burr to make sure that the organized sequence was correct." Moreover, Mr. Burr testified that he recalled a meeting with Mr. Bockhold just before he went back to Birmingham that Saturday [April 7] morning, but did not recall Mr. Cash. Tr. 10852 (Burr). Actual events could be different: Mr. Burr believes that it's possible Mr. Cash was at such a meeting because of the various meetings during the time period. Mr. Burr (and Messrs. Stokes and Kochery) "had lots of meetings with Mr. Bockhold and Cash that could have been one of those meetings." Tr. 10861 (Burr). Finally, Mr. Burr recalls providing Mr. Bockhold with a sequence of testing over time. Tr. 10853-4; 10859 (Burr).

Finally, with respect to the exclusion of Mr. Burr from participating in the drafting of the April 9th letter, Intervenor relies on the fact that Mr. Burr flew from Atlanta to Birmingham after the presentation at the NRC on April 9th. From this fact and Mr. Cash's recollection that he gave Mr. Burr his handwritten list at the presentation, Intervenor infers that Mr. Burr participated in editing the April 9th letter. This inference is unsupported by anything but speculation and controverted by direct evidence. First of all, Mr. Burr testified that there could have been conversations taking place on the plane in which he was not a participant. Tr. 10873 (Burr). More importantly, a review of an April 7 draft of the April 9th letter shows that the statement concerning diesel starts was not changed after April 7th. Compare, Int. Exh. II-40 at 3, item 6 with GPC Exh. II-13 at 3, item g. Therefore, no one was involved in revising the diesel-related statements on April 9th. Moreover, Mr. Hairston only recalled changes to the letter which addressed long term

recommendations. Tr. 3610, GPC Exh. II-13 at 3, ¶ 5. Other than sheer speculation, nothing suggests Mr. Burr participated in editing of the April 9 letter on the plane ride back from the April 9 presentation.

R. "Georgia Power's August 30, 1990 Letter to the NRC."

i. "'Top Down' Development" (Int. PF 377-382).

Intervenor PF 377 cites Mr. McCoy's testimony (Tr. 3223) at the hearing for the proposition that the OSI team leader "suggested that Georgia Power submit an explanation for the record concerning the error made in the April 9th letter." This is not an accurate representation of Mr. McCoy's Testimony which reads as follows:

There was an [OSI] investigation, I believe this was a two-week team investigation, something like that, a one or a two week time frame anyway. It was a lot of people. They were assisted by OI. They conducted many interviews.

As a result of that, the OSI Team Leader at the end of the investigation expressed to me that they had concluded that there was no intentional mistakes or intention to mislead the NRC. However, that the record had never been corrected properly about the starts, and that there was still confusion. His team had run into some confusion about the use of the terms successful starts and valid starts.

He suggested that we write a letter to clarify that. I contacted Mr. Brockman after the inspection and discussed that with him. He agreed it would be a good idea to get a letter on the record, although he did not indicate that it was a significant problem from this point of view.

So we prepared a letter that I thought was responsive to exactly what the Team Leader was asking us to do.

The way it was expressed to me was just simply to get on the record a complete accurate statement of the number of starts that the diesel generator had had. So that a person could look at all of these things that had been presented in the meantime, and see that there was finally something there in the record that had all the information about the starts and was completely accurate.

Tr. 3223-24 (McCoy). Mr. McCoy testified that the OSI team leader did not ask Georgia Power to explain why Georgia Power believed the April 9th letter was inaccurate. Tr. 3098 (McCoy).

See GPC PF 349-50.²⁵¹

ii. "Bockhold Steering of the PRB" (Int. PF 383-388).

Intervenor claims that "Mr. Bockhold participated in the PRB review of the August 30th letter even though he had previously been advised that his presence was intimidating to other members." Int. PF 384 citing Tr. 3510 (Bockhold), Mosbaugh at 59-60. This misstates the evidence. Mr. Bockhold testified that prior to the PRB August 30 meeting he recalled there was a concern raised that he had allegedly intimidated a member of the PRB. He further explained that he recalled addressing the PRB at some point to correct that impression. Tr. 3510. Intervenor did not point out in his findings that this concern was fully resolved prior to August 30.

²⁵¹ The NRC's PF 152 states that Georgia Power "understood that the NRC was looking for an explanation for the error." We disagree. The NRC cites Mr. Greene's testimony at Tr. 6861-62 as support for its PF. However, Mr. Greene's testimony cannot fairly be read as stating that Georgia Power "understood that the NRC was looking for an explanation of the error." It can only be read to say what the letter in fact was saying, as far as he was concerned. Moreover, the NRC analysis of the August 30 letter appears to acknowledge that had Georgia Power omitted from the August 30 letter the inaccurate portion (i.e., the explanation of the cause of the error), the letter would have accomplished its purpose and satisfied the NRC. Staff Exh. II-50 at 17-18. Finally, the NRC did not cite Mr. McCoy's testimony which is contrary to their PF 152. See GPC PF 349-50.

This same issue was included in the allegations that the OSI team evaluated between August 6 and 17. In response to that review, Georgia Power provided the NRC with a "white paper" on this issue (GPC Exh. II-194) which stated, in pertinent part:

While this may be a recently identified item with the special NRC Operations Safety Team Inspection, it was previously identified to the Quality Concern Program. It's documented as part of 90V0015. The investigation consisted of interviewing the voting members of PRB meeting 90-15. During the interviews one individual did expressed [sic] some[] hesitancy of being "true and candid" because of Bockholds [sic] presence. This was later addressed by Bockhold to all PRB members in one of their meetings. He reinforced the commitment of their independence and said that neither he or anyone else should ever influence someone's vote . . . that if any of the members ever felt they were incapable of functioning freely and independently, they should be excused and assign someone else this responsibility.

As a result of renewed interest in this subject a new inquiry was made. [See GPC Exh. II-193] This time members (25 of 27 were contacted, two were unavailable), both voting and non-voting, were questioned on their opinion of intimidation. Each was afforded the protection of confidentiality and briefed on the history of the allegation.

This investigation found no evidence of persuasion by presence, intimidation or coercion by the Plant Manager toward PRB members. It's believed that any evidence of this allegation pertained strictly to the issue previously identified in quality concern 90V0015.^{76/}

Therefore, there was no reasonable basis on which to conclude that, because of this earlier concern, Mr. Bockhold should not have attended PRB meetings.

^{76/} The NRC Staff also addressed this allegation as part of its review of Intervenor's 2.206 petition. With respect to that allegation, the Director's Decision concludes: "NRC resident inspectors at Vogtle frequently attend PRB meetings and have found that the subjects are candidly discussed and the issues resolved without intimidation or fear of retribution. Consequently, the allegation that Vogtle's General Manager intimidated members of the PRB when they attempted to determine whether the use of the waste system should be resumed, could not be substantiated." Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2; Hatch Nuclear Plant, Units 1 and 2), DD-93-08, 37 N.R.C. 314, 345 (1993), vacated, CLI-93-15, 38 N.R.C. 1 (1993) (noting that the Commission had no view on the soundness of the Staff's analysis).

Intervenor PF 384 also states that Mr. Aufdenkampe said Mr. Bockhold had a forceful and sometimes overbearing personality. When Mr. Aufdenkampe gave this testimony, he added for clarification that he felt those participating in the instant hearing were also overbearing when they addressed others and that he had worked with much stronger personalities than George Bockhold. Tr. 5776-77 (Aufdenkampe).

Intervenor's PF 386 states "Mr. Bockhold told the PRB that any changes made to the August 30 letter must come back through the PRB and must be unanimous. Tr. 5775 (Aufdenkampe)." Intervenor did not include in his finding Mr. Aufdenkampe's testimony, two pages later in the transcript, which is unfavorable to his view. Mr. Aufdenkampe said he interpreted Mr. Bockhold's statement that the PRB approval must be unanimous as saying that "if anybody disagrees with this he's not going to sign it. ... I took that as a statement by him to say everybody's got to be comfortable with this before I sign it out." Tr. 5777 (Aufdenkampe).

Intervenor observes that, in a taped conversation with Mr. Mosbaugh, Mr. Aufdenkampe questioned Mr. Bockhold's conduct at the August 30 PRB meeting and almost called a "point of order," but that he didn't because Mr. Bockhold did not cross the line. Int. PF 388. Intervenor cited Mr. Aufdenkampe's limited testimony on this topic at the May 17 hearing but did not refer to his later, more expansive testimony at the May 25 hearing. Mr. Aufdenkampe testified that, neither in the August 30 meeting nor any other PRB meeting attended by Mr. Bockhold, did he feel that he had to accept a position espoused by Mr. Bockhold with which he disagreed. Tr. 5817; cf. Tr. 13790 (Kitchens). Nor did Intervenor address the testimony of Mr. Greene on this topic who said that he did not believe Mr. Bockhold fully participated in the PRB's decision-

making process or in the PRB's vote, or unduly influenced the PRB. Tr. 6842-43 (Greene). See GPC PF 391-92. Based on the testimony of Messrs. Aufdenkampe and Greene, there is no reasonable basis to conclude that Mr. Bockhold's conduct at the August 30 meeting was inappropriate.

Intervenor asserts that "Mr. Bockhold's actions at the August 30th PRB meeting was [sic] unreasonable." Int. PF 383. He cites no evidentiary support for this statement and the evidence adduced at the hearing does not support this finding.

iii. "Mr. Bockhold's 'Emotional' Comment to Leave the Letter Undisturbed" (Int. PF 389-390).

Intervenor's PF 390 correctly states that "Mr. Greene felt Mr. Bockhold's statement to the PRB that 'If Birmingham likes this letter written this way, I don't, that's what we should do,' was probably not appropriate." Tr. 6845, 6851 (Greene). However, Intervenor goes on to state that "Mr. Greene also felt that Mr. Bockhold's statement about keeping another the [sic] sentence in the letter, even after it was pointed out that it was in error, was not appropriate." Although Intervenor cites "Tr. 6845, 6851 (Greene)" in support of this proposition, there is no such conclusion evident from that portion of the transcript. Moreover, Mr. Greene testified that he if he disagreed with Mr. Bockhold's comments he would have told him so and that he did not think Mr. Bockhold was driving the meeting. Tr. 6843 (Greene).

As stated in GPC PF 377-78, Mr. Bockhold's statement was not significant and, given this, his comment which Mr. Greene felt was inappropriate is not a sufficient basis on which to conclude that Mr. Bockhold lacks character or integrity.

iv. **"Mr. Bockhold's Changing of the Word 'Error' to 'Confusion'" (Int. PF 391).**

Intervenor's PF 391 correctly states that "Mr. Aufdenkampe questioned Mr. Bockhold about whether Mr. Cash was confused between successful start and valid test. Mr. Bockhold stated that he was not." With respect to Mr. Aufdenkampe stating that the proposed sentence in the draft letter was in error, Intervenor summarily concludes that "[c]learly Mr. Aufdenkampe was correct in asserting that there was no confusion and the sentence should not have been included in the letter." Int. PF 391. Intervenor cites no support for this conclusion whatsoever. The rationale for this statement is addressed in GPC PF 379-85. While the sentence in question was inarticulately worded, it would be unreasonable to draw an inference from this that Georgia Power intended to mislead the NRC. Nor is this a sufficient basis, even considering Mr. Bockhold's comment in the PRB meeting which Mr. Greene found inappropriate, on which to conclude that Mr. Bockhold lacks character or integrity.

The NRC Staff states:

by urging this wording, Mr. Bockhold did not create an environment where the PRB members who were reviewing the draft letter could adequately resolve the concern that had been raised about the accuracy of the 'confusion' statement. ... It is also evident that GPC had difficulties fostering an environment where employees could question superiors and have their concerns addressed with respect to the accuracy and completeness of communications with NRC.

NRC PF 159. Georgia Power urges the Board to find that this conclusion is unwarranted -- that it is too great a leap to make in the absence of any direct evidentiary support. Moreover, the Staff

had a representative at this PRB meeting.²⁷¹ How is it then, if the Staff's conclusion is warranted some five and a half years later, based on limited evidence, that it did not become a matter of discussion and action by the NRC Staff in 1990? Under these circumstances the Board should not accept the NRC Staff's proposed finding.

v. "Mr. Bockhold's 'Mix-up the Words' Comment" (Int. PF 392-393).

Intervenor apparently has no disagreement with Georgia Power's PF 386-88, which explain that Mr. Bockhold's comment does not indicate any intent to mislead by mixing-up the words of the letter, but was rather an attempt to have the PRB members focus on ensuring the letter was technically correct. Cf. Int. PF 401 ("Mr. Bockhold cautioned the PRB not to 'Englishize' what he perceived to be a technically correct letter.").

vi. "Deletion of Footnote 2" (Int. PF 394-398).

Intervenor cites himself for the proposition "[w]hen Mr. Bockhold realized that the explanation in the sentence and the footnote would be contrary to the explanations that the Company was pursuing he made efforts in this meeting to cut off that discussion and suggested that the comments be excluded. Tr. 8963 (Mosbaugh)." Int. PF 396; see also Int. PF 397. Other than Mr. Mosbaugh's speculation, there is no evidentiary basis for this conclusion. On cross-examination, Mr. Mosbaugh was unable to satisfactorily explain what was misleading about the deletion of footnote 2 from the draft table (Int. Exh. II-54), considering that there were other

²⁷¹ In this regard, in 1993 the Staff also found that NRC "resident inspectors at Vogtle frequently attend PRB meetings and have found that the subjects are candidly discussed and the issues resolved without intimidation or fear of retribution." See Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2; Hatch Nuclear Plant, Units 1 and 2), DD-93-08, 37 N.R.C. 314, 345 (1993), vacated, CLI-93-15, 38 N.R.C. 1 (1993) (noting that the Commission had no view on the soundness of the Staff's analysis).

"post-maintenance" starts identified on the table beyond Start No. 124. Tr. 8962-63 (Mosbaugh). Furthermore, in response to questions from Chairman Bloch, Intervenor apparently took the position that the table was misleading because it did not include information about the original count of diesel starts, i.e., the starting point of the count and why that point was selected. Tr. 8967-69; See also Int. PF 398. Intervenor provides no evidentiary support for this bald statement and it should not be accepted. As demonstrated above, such information was not requested by the NRC to be put into the letter and Georgia Power's failure to include it cannot reasonably be construed as an intent to mislead.

vii. "McCoy's Inconsistent Statements" (Int. PF 399-401).

Intervenor contends that the Board should draw a negative inference from the language of the August 30 letter as compared to a public statement which quotes Mr. McCoy. Int. PF 399-400. He did not question Mr. McCoy at the hearing about this alleged inconsistency and, other than his own speculation, Intervenor provides no evidentiary support for this conclusory statement. Under these circumstances, the Board should not accept Intervenor's findings and should instead give the benefit of any doubt to Mr. McCoy. As explained in GPC PF 369-72, Mr. McCoy's understanding of what the August 30 letter was trying to explain was not inconsistent with the public statement he made about the error in the April 9 letter. The NRC Staff also urges that the Board not draw any conclusions from the public statement document, which was not presented to the NRC and may contain statements taken out of context. NRC PF 161-62.

viii. Conclusion.

In Int. PF 401, Intervenor wraps up his position on the August 30 letter as follows:

We believe that corporate management inappropriately exercised control over the language in the letter to the exclusion of other site personnel⁷⁸ and that it was inappropriate for Mr. Bockhold to attend the PRB meeting. Wording changes were not clear enough for the NRC, or even other Georgia Power personnel, to understand. Mr. Bockhold cautioned the PRB not to "Englishize" what he perceived to be a technically correct letter. The evidence supports the conclusion that Mr. Bockhold's actions at the PRB constitute a lack of character or integrity.

Georgia Power submits that the evidence adduced at the hearing does not support this conclusion. It does not suggest that corporate management inappropriately exercised control over site personnel (see, e.g., GPC PF 366-68, NRC PF 155) and it does not suggest that it was inappropriate for Mr. Bockhold to attend the PRB meeting (see, e.g., GPC PF 368). It is true that the wording changes to the letter were not clear enough and that Mr. Bockhold did not want to "Englishize" the letter. However, taken as a whole, the evidence is insufficient to draw a conclusion that Georgia Power or Mr. Bockhold lack character or integrity.

That Georgia Power was acting in good faith is supported by Mr. Mosbaugh's lack of concern in 1990 with the August 30 meeting. Although he attended and taped the August 30 meeting, he did not raise any allegations during this time with NRC-OI that Mr. Bockhold's conduct in the August 30 meeting was inappropriate. There is no doubt that at this time Mr. Mosbaugh was

⁷⁸ In support of this statement, Intervenor cites Mr. Frederick's testimony for the general proposition that "when Georgia Power management doesn't get the product they want, they go behind closed-doors and do it themselves. Tr. 4146 (Frederick), Int. 22B." Int. PF 401 n.95. Mr. Frederick's testimony is taken out of context. As explained in GPC PF 655, Mr. Frederick testified at the hearing that his comment referred to his opinion that management should do the critique team's work themselves if they felt it was unsatisfactory.

poised to point out to OI investigator Larry Robinson any inappropriate conduct he observed. See GPC PF 374-75. Significantly, in his Final Statement of Fact and Conclusions of Law, Intervenor presented no evidence, or even any argument, in opposition to these adverse findings concerning Mr. Mosbaugh's credibility in this regard.

S. "Intervenor's 2.206 Petition and Georgia Power's Denial of Hairston's Participation in the April 19th Conference Call" (Int. PF 402-403).

Intervenor is correct that in its April 1, 1991 2.206 petition Response, Georgia Power stated that Mr. Hairston was not a participant "in a telephone conference call late on April 19, 1990" which "reviewed" the final April 19th LER wording. Intervenor is also correct that in October 1991, Georgia Power filed a further Response to additional allegations submitted by Messrs. Hobby and Mosbaugh. Int. PF 402-405 (first two sentences). Intervenor is incorrect, however, in concluding that "the" conference call being referenced in these Georgia Power Responses necessarily had to be "Call A" in which Mr. Hairston was a participant. Int. PF 305, last sentence. In his analysis Intervenor conveniently chooses to identify "the" conference call as the one on which Mr. Bockhold was a participant in his analysis. Intervenor's choice in associating specific calls with select participants is clever, but ignores the actual Georgia Power statements.^{79/} "[T]he" conference call in these Georgia Power Responses was identified as the one in which Mr. Hairston did not participate.

Intervenor also is correct in stating that in December 1991, Georgia Power submitted a supplement to its earlier 2.206 Responses. Int. PF 406. However, once again, Intervenor puts

^{79/} Intervenor repeatedly stresses the Responses refer to "Call A." See, Int. PF 405 (last sentence), 406 (last sentence) and 412 (incorrectly referring to "footnote 3" rather than the December 10th response. There is no footnote).

words into Georgia Power's statements which are not there. Georgia Power never stated that "the" conference call was "Call A", as Intervenor argues. Intervenor argues that Georgia Power's earlier Responses indicated that "there was only one conference call occurring on April 19th." Int. PF 406, fn. 98. This is patently wrong; the October 1991 Response expressly acknowledged Georgia Power's belief that multiple telephone calls occurred on April 19th. Int. Exh. 74 at 5.^{80/} The December 1991 supplement made a limited showing: that a participant (Mr. Aufdenkampe) in a time frame very close to the April 19, 1990 telephone conference call indicated that Mr. Shipman and not Mr. Hairston participated in conversations when the language concerning the diesel generators was finalized in the LER. Even today, with the hindsight permitted by contemporaneous tape recordings, Mr. Hairston did not participate on the conference call which conducted the final review of the language in the LER. See, e.g. Staff Exh. II-45 at 45. The fact that Mr. Bockhold only participated on "Call A" and that Mr. Hairston participated briefly on "Call A" (but not in a portion of the call where the "comprehensive test program" wording was discussed) does not answer the question of whether the statements in the Responses are true or false.^{81/} They are true.

^{80/} "If a tape recording of the late afternoon telephone conference call demonstrates that Mr. Hairston did participate in it, the collective recollection of VEGP managers in August 1990, including Mr. Mosbaugh, and of Mr. Hairston simply was not as accurate as contemporaneous taping. The LER addressed the March 20, 1990 Site Area Emergency at the VEGP. The Company believes that multiple telephone calls between the VEGP site and the corporate office in Birmingham preceded the transmittal of the finalized LER to the NRC. Whatever "evidence" Mr. Mosbaugh may have supplied to the NRC associated with this latest assertion may well reflect a telephone conference different and earlier than the one addressed in the April 1, 1991 response. GPC continues to believe, based upon its best knowledge, that the footnote on page 3 of Attachment 3 to its April 1, 1990 Response is accurate." Int. Exh. II-74, pg. 5, fn. incorporated into text (emphasis supplied).

^{81/} The Board will observe that Mr. Swartzwelder was a participant in "Call B" -- the call in which the participants did conduct the final review of the LER. GPC Exh. 2 at 29-33.

First, the April 1, 1991 Response states that Mr. Hairston was not a participant in a telephone conference late on April 19, 1990 in which the diesel generator start wording "at least 18 times each" was "reviewed." Int.Exh. II-73 at 2, fn. 3. This is a correct statement of fact. Second, in October 1991, Georgia Power reiterated its belief that the April 1, 1991 statement was correct. This Response also recognized the possibility that the August 1990 recollections of Vogtle managers might not be as accurate as Mr. Mosbaugh's contemporaneous taping. The Response also expressed the Company's belief (accurate, in hindsight) that multiple telephone calls between the site and the corporate office preceded the transmittal of the finalized LER to the NRC. These October 1991 statements are also accurate. Third, with respect to the December 1991 Supplemental Response, Georgia Power again expressed its belief that Mr. Aufdenkampe's statements indicated that Mr. Shipman, and not Mr. Hairston, participated in the conversations which finalized the LER. The statements by Mr. Aufdenkampe were made April 27, 1990, closer in time to the actual events than the August 1990 white papers. Mr. Aufdenkampe in this proceeding stated that the excerpted tape could not stand for the proposition that Mr. Hairston was not a participant in the "big conversation on those numbers with George Bockhold." Tr. 5425 (Aufdenkampe). Nonetheless, that is exactly what Mr. Aufdenkampe said on April 27, 1990.

Intervenor argues that both Mr. Shipman and Mr. Aufdenkampe "admitted to knowing that Mr. Hairston was a participant" in Call A. Int. PF 407. The testimony of Mr. Shipman and of Mr. Aufdenkampe do reflect their recollections that Mr. Hairston participated in telephone conversations related to the April 19th LER. Mr. Hairston, in fact, was involved in discussing

aspects of the LER (e.g., operator actions) during telephone conversations between the corporate office and the site on April 19th.⁸²

By October 1991, Georgia Power had come to the belief that multiple telephone calls between the site and the corporate office in Birmingham preceded the transmittal of the finalized LER to the NRC. Int. Exh. II-74 at 5, n. 2. In this time frame, Mr. Aufdenkampe's recollection (in the absence of listening to tape recordings), was of a telephone conversation that continued all day from 2:00 p.m. until 6:00 p.m. To his recollection at the time, Mr. Hairston participated in a portion of this call. Tr. 5427-5428 (Aufdenkampe). His independent recollection was that Messrs. Bockhold, Hairston and Shipman were in the conversations on April 19th "at some point in time." Tr. 5426 (Aufdenkampe). He did not differentiate between the various calls. With his knowledge now, he would refer to as "Call A" as the call in which Mr. Hairston participated. Tr. 5428 (Aufdenkampe).

While Mr. Shipman has always recalled Mr. Hairston's participation in "Call A" and apparently did not express it in August 1990, Intervenor is incorrect in asserting that Mr. Shipman's testimony establishes the falsity of the April 1, 1991 Response, the October 3, 1991 Response, or the December 10, 1991 Response. Indeed, Mr. Shipman testified that he reviewed these transmittals and that if he had become aware from reading and reviewing these documents that there was an omission, he would have called it to his management's attention. Tr. 11319-11321 (Shipman). Mr. Shipman's testimony, in sum, indicates that he recalled Mr. Hairston's participation in "Call A" but failed to identify any falsity in any of the 2.206 Responses. A logical reason exists for this

⁸² Georgia Power's August 1990 white paper response to the broad question 3.2 ("Who prepared the LER?"), Int. Exh. 74 at 9, should have included Mr. Hairston.

dichotomy: Mr. Hairston did not participate in the final conference call between the site and the corporate office in which the final LER wording was reviewed (i.e., "Call B").

T. "December 10, 1991 Response to the 2.206 Petition Contains a Material False Statement Concerning the Meaning of Tape 71" (Int. PF 413-423).

Intervenor contends that Tape 71 clearly indicates that Mr. Hairston was a participant to the April 19, 1990 telephone conference call when language concerning emergency diesel generator start counts was finalized in the LER. Int. PF 413. As an initial matter, Intervenor selectively edits the December 10, 1991 2.206 petition Response of Georgia Power by deleting key wording. The full statement in the December 10, 1991 Response is as follows:

One of those tapes of April 27, 1990 discussions (identified as tape No. 71) indicates that Mr. Hairston was not a participant during the April 19, 1990 telephone conference call when language concerning emergency diesel generator start counts was finalized in the LER.

Int.Exh.II-75 at 2 (double underlined portion was omitted from Int. PF 413)

Georgia Power's interpretation of the tape segment was that "the participant [Mr. Aufdenkampe] indicated that Mr. Shipman and not Mr. Hairston participated in conversations which finalized the LER." Int. Exh. II-75 at 4. Georgia Power did not assert that Mr. Aufdenkampe did not believe that Mr. Hairston was a participant in what is now referred to as "Call A." Mr. Aufdenkampe's testimony in this proceeding was that: 1) neither he nor Mr. Mosbaugh believed that Mr. Hairston was not a participant in "Call A;" 2) Mr. Mosbaugh emphatically stated that Mr. Hairston was a participant in "Call A"; 3) Mr. Aufdenkampe agreed with Mr. Mosbaugh that Mr. Hairston participated in a portion of "Call A"; and 4) today, he does not view the tape [71] as indicating Mr. Hairston was not a participant in a portion of "Call A." Tr. 5422-5425. Mr.

Aufdenkampe's testimony does not directly address the issue of whether the December 1991 Response is, in itself, accurate. No evidence exists that Mr. Hairston ever participated in "a big conversation on those [diesel start] numbers with George Bockhold." No evidence exists that Mr. Hairston participated in conversations after "Call A" in which the final reviews of the LER occurred. As stated by Mr. Aufdenkampe in Tape 71, Mr. Shipman, and not Mr. Hairston, participated in those calls. Int. Exh. II-75 at 2-3; GPC Exh. II-32 at 5-6.

Intervenor vigorously assails the transcript of Tape 71 submitted into evidence by Mr. Aufdenkampe. Int. PF 417-422. Intervenor, in essence, accuses Georgia Power of tendering a false and misleading transcript. The actual history of Georgia Power's transcript for Tape 71 dispels this reckless and contemptible accusation. Once again Intervenor has let fly an allegation without developing or examining the actual facts. Moreover, it is outside the scope of the proceeding. Tr. 3584 (J. Bloch: "false statements subsequent to the events in this case are not part of this part of the hearing."). He extrapolates from a question mark to an accusation of intentional wrongdoing. It is professionally and intellectually demeaning to characterize each disagreement into an alleged intention to deceive. This particular disagreement in punctuation of one of the tape transcripts has agreement between NRC and GPC versions. These parties are not lying simply because they differ from Allen Mosbaugh's interpretation of a taped conversation. The facts show a straight forward, honest submission of the transcript into the record:

- 1) Georgia Power prepared and submitted transcript excerpts of Tape 71 on December 10, 1991 to the NRC (Int. Exh. II-75, at 2-4).^{83/}

^{83/} A similar transcript was provided to the Department of Justice in December 1992. Int. Exh. II-116 at 50-52.

Footnote continued on next page

2) Intervenor and the Staff were provided the Tape 71 transcript with Mr. Mosbaugh posing a question on, approximately, February 28, 1994. Over a year transpired before Georgia Power filed the transcript in this proceeding in May 1995. During that time, Intervenor was subject to an outstanding request to review and to stipulate to the transcripts. Specifically, on February 28, 1994, Intervenor was sent a Tape 71 transcript along with others, originally prepared by Brown Reporting and revised by Georgia Power. Georgia Power requested that the other party state its objections, in writing and with specificity, to the proffered transcripts. February 28, 1994 letter of John Lamberski, Esq. to Charles Barth, Esq. and Michael D. Kohn, Esq.

3) For a second time, in November 1994, counsel for Georgia Power provided the GPC-prepared transcript for Tape 71 for stipulation by the parties. These partial transcripts were identified by Georgia Power as being relevant to its case. November 11, 1994 letter of John Lamberski, Esq. to Charles Barth, Esq. and Michael D. Kohn, Esq. Copies of the February and November 1994 letters were previously served on the Board.

4) Notwithstanding the extensive lead time, the parties did not stipulate to the proffered transcript of Tape 71 or a number of other tape transcripts. Consequently, at the hearing the parties tendered their versions of tape transcripts. With respect to Tape 71, the Board recognized that the tape itself is the ultimate evidence. Tr. 5788-5790 (J. Bloch).

Footnote continued from previous page

More extensive transcript portions of Tape 71 were prefiled with Mr. Aufdenkampe's testimony. GPC Exh. II-32 (Aufdenkampe Ex. F). GPC Exh. II-32 at 6, 1.4 reflects Mr. Mosbaugh questioning "they were all on there?" Int. Exh. II-75 and Int. Exh. II-116 have Mr. Mosbaugh stating "they were all on there." Intervenor excerpts several pages of Mr. Aufdenkampe's hearing testimony in which he states that the statement of Mr. Mosbaugh should be a question, rather than a statement.

5) The NRC Staff tendered Staff Exh. II-32, which was received into evidence. Tr. 5791. The Staff's version of the tape transcript is consistent with GPC's version and reflects that Mr. Mosbaugh asked a question. Staff Exh. II-32 at 8 (pg. 6).

Based on the foregoing, the Board should reject Int. PF 413-423 concerning Georgia Power's December 10, 1991 response.

U. "Precursors to the Site Area Emergency - Calcon Sensors" (Int. PF 424-430).

Intervenor states: "Plant Vogtle had one of the highest CALCON failures rates. Georgia Power was aware of its abnormally high CALCON sensor failure rate for a number of years. Mosbaugh at 39, Int. II-34; Tr. 7115 (Stokes)." Int. PF 426. Intervenor mischaracterizes the evidence concerning Calcon sensor failures. Mr. Stokes testified that Vogtle had problems with the sensors for a period of years; he did not testify that Vogtle had one of the highest Calcon sensor failure rates. Intervenor's cite to NUREG 1410 (Int. Exh. II-34) is misleading. Mr. Mosbaugh's Prefiled Testimony, at 39, explains that this refers to Appendix I of NUREG 1410. However, Intervenor was aware of, and did not cite, the testimony of Lewis Ward, who specifically addressed NUREG 1410, Appendix I. Mr. Ward testified that some of the failure data in Appendix I is erroneous and the comparison of Vogtle data with the rest of the industry is erroneous. See Affidavit of Lewis Ward in Support of Applicant's Supplemental Statement Concerning Matters Raised by the Board, dated November 10, 1990 (Tr. ff. 7744) at 4-8. Among other things, Mr. Ward concluded in that affidavit that (1) "no clear precursors were evident from the prior experience at Vogtle to indicate unreliability of the Calcon sensors," and (2) "Georgia Power experience with Calcon sensors was similar to other TDI [Cooper] diesel generator owners. Further,

NUREG-1410 is misleading in that it compares a different level of detail between Vogtle and the rest of the industry." Id. at 4-5. See also GPC Exh. II-197 (NRC August 14, 1995 letter indicating agreement with Georgia Power's 1990 exceptions to NUREG-1410, Appendix I Calcon sensor failure data).

Intervenor contends "Maintenance personnel had known about the CALCON problems for some time and they had just been living with the problem. ... Georgia Power did nothing to alleviate this condition or to determine the root cause of an inadequate calibration procedure. Tr. 7110-11 (Stokes)." Int. PF 425, 426. These findings are highly misleading. Intervenor omits significant additional testimony from Mr. Stokes in which he explained to the Board that Georgia Power had made a reasonable, good faith effort to correct the problems with calibration of the sensors. Chairman Bloch's question and his response follow:

Q Was adequate care taken in writing the procedure in the first place, do you know?

A I would say it was. We went through the proper steps which would be to say, hey vendor, I got this item from you, tell me how to calibrate this item. So that's what we did and the vendor came back, having more knowledge probably about the instrument than we did, and came back and said this is how you calibrate this instrument, and that's it. And particularly it's done throughout the industry that way.

Q Were the things that had to be done in order to correct the calibration techniques that were in effect before the site emergency really very difficult things to think about and do properly?

A No.

Q Should skilled people writing procedures have been able to write the calibration procedure properly in the first place?

A You can tell a lot from hindsight, is all I can say. And nobody generally is going to do too much overriding what a vendor -- if a vendor has developed a procedure for you and it has been acceptable throughout his industry, would you normally override that, unless you had some real specific reason for distrusting what he put on there. But --

Q So the procedure actually came from the vendor?

A The original procedure came from the vendor, yes.

Q So that same procedure might have been in effect at many plants?

A Or something similar to it I would say.

Tr. 7111, 7113-14. Moreover, Mr. Ward's affidavit established that the Calcon sensor "calibration procedure had been revised just prior to the 1990 outage to incorporate recommendations received from the sensor vendor ... in late 1989." GPC Exh. II-63 at 2. Furthermore, Mr. Briney testified that a Request for Engineering Review ("RER") had been initiated in 1988, to be used in conjunction with the generic calibration procedure (GPC Exh. II-154) for the calibration of the Calcon temperature sensors. Tr. 12302-05. Mr. Briney was able to identify that the RER No. was 88-0707 by reference a maintenance work order (Int. Exh. II-206), which included an attachment 1 providing supplemental instructions on Calcon sensor calibration technique and referencing RER 88-0707. Tr. 12338-39. This RER (GPC Exh. II-168) was later located by Georgia Power and admitted into evidence. Tr. 12912. Based on the above, Intervenor's assertion that Georgia Power "did nothing" is inaccurate and the Board should reject it.

Intervenor PF 428 states "Georgia Power claimed it was justified in excluding [trips of the 1B diesel after March 20] from the April 9th presentation and the COA letter and did not say they

were related to the root cause until it filed its response to Intervenor's Seventh Set of Interrogatories." Intervenor cites his prefiled testimony in support of this finding. Georgia Power never denied that the 1B diesel problems were related to the root cause of the March 20 diesel failure. Georgia Power correctly believed, however, that the NRC was well aware of these failures. NRC PF 12.⁸⁴ Furthermore, the "Quarantine Components" transparency used in the April 9 presentation to NRC did identify the switches which caused these 1B diesel problems. See GPC PF 69.

Intervenor apparently contends that the involvement of the low jacket water pressure switch in the 1B diesel problem during Start No. 136 (March 24, 1990) -- when the diesel kept running after receipt of a high jacket water temperature alarm -- leads to a common cause for the site area emergency of air quality. Int. PF 429-30. This may be Intervenor's last gasp on his theory that Georgia Power misled the NRC about the root cause of the diesel failure. Intervenor is wrong and Georgia Power has demonstrated that with extensive evidence on its root cause evaluation (see GPC PF 563-646) which are unopposed by Intervenor's findings.

V. "Prevailing Management Attitude" (Int. PF 431-475).

i. "Survey" (Int. PF 431).

Intervenor's PF 431 states: "The results of a survey taken in the spring of 1990, of nuclear personnel showed that seventy-three percent of Vogtle employees agreed with the statement 'Employees are afraid to voice an opinion that management does not want to hear' and fifty-two

⁸⁴ Even Mr. Mosbaugh admitted on cross examination that the NRC had open access to the diesel generators and its records, and that if the NRC asked for some particular records, they could generally get them. Tr. 10405-06 (Mosbaugh).

percent of Vogtle employees agreed with the statement 'I am afraid to voice an opinion that my management does not want to hear.'" Intervenor failed to cite any of Georgia Power's evidence opposing his view. Mr. Mosbaugh's Prefiled Testimony, at 10, takes the survey results out of context and distorts the survey results. Mr. Hairston's Rebuttal Testimony placed the survey results into their proper perspective:

In 1990, The Southern Company administered a Performance Pay Plan Survey. This survey was sent to employees in all the Southern System companies, not just nuclear personnel at Vogtle. (Similar surveys were conducted in other years.) This survey, among many questions, included a few which sought to determine whether employees in The Southern System felt free to express opinions. These questions were not designed to determine whether nuclear employees in the System felt comfortable in identifying and reporting conditions adverse to safety at the plants. Rather, they sought to determine whether System employees in general felt free to express opinions which differed from those of System management on any matter. For example, a nuclear employee, in responding to the questions, might answer them as they relate to non-nuclear issues such as pay, promotion and personnel issues.

Hairston Rebuttal at 2. Mr. Hairston testified that he not agree with Intervenor's characterization of the results of the survey:

Mr. Mosbaugh does not adequately explain the questions and the responses, which reflect varying degrees of agreement and disagreement. Question 51 of 1990 survey asked employees whether they agreed or disagreed with the statement, "In general, employees are afraid to voice an opinion that management doesn't want to hear." This statement was worded in a manner that sought an employee's opinion of how other employees generally felt. Item 65 of the 1990 survey asked employees whether they agreed or disagreed with the statement, "In general, I am afraid to voice an opinion that management doesn't want to hear." This statement was worded in a manner which would elicit each employee's own opinion of how he or she personally felt. In response to these questions, employees were asked whether they strongly agreed, agreed, slightly agreed, slightly disagreed, disagreed, or strongly disagreed.

.....

There is a big difference between what employees felt about themselves versus what they felt about others. A majority of employees (52%) agreed or strongly agreed that employees were afraid to voice an opinion that management doesn't want to hear. When employees were asked in 1990 whether they were personally afraid to express an unpopular opinion, significantly fewer (32%) of the responding employees agreed or strongly agreed. This response is probably a more accurate measure, because the question asks for personal knowledge. Again, these responses do not necessarily address the willingness of nuclear employees to identify and report technical deficiencies or conditions adverse to safety, but could relate to the willingness of employees to express opinions on any matter. Further, the identification of deficiencies are not a voicing of an opinion that management doesn't want to hear -- it's a part of each worker's routine responsibilities.

.....

Obviously, I would like the number of employees indicating reluctance to express unpopular opinions to be lower (in fact, zero). I believe that even in the best workplace there will always be some percentage of employees who are too timid to express opinions, particularly with respect to management choices, such as staff selection and sizing, promotion practices, and strategic plans. I also believe that the surveys are part of the Southern System's efforts to foster a more "worker participatory" environment or to "empower" workers in identifying new approaches to tasks.

More importantly, my personal opinion is that the employees at Vogtle and in the Vogtle Project are professionals who would raise concerns and express opinions freely. Our employees know that conditions adverse to nuclear safety are things that management wants to hear about, and to have addressed and resolved.

Hairston Rebuttal at 2-6.

During cross examination, Mr. Mosbaugh admitted that, in conducting the survey, the Company had taken a positive step. Tr. 9526. Based on the foregoing, the Board should reject Intervenor's characterization of the survey results.

ii. "FAVA" (Int. PF 432-436).

Intervenor attempts to demonstrate three things with respect to the FAVA matter: 1) "Less than candid responses [by Gus Williams] to a formal NRC investigation" (Int. PF 434); 2) "Management's motivation and response to significant regulatory concerns" to allow Mr. Bockhold "to control the investigation" (Int. PF 435); and 3) "Management's commitment to root cause analysis and resolving deficiencies in not issuing a report on the FAVA allegations" (Int. PF 436). Evidence on the FAVA issue in this proceeding was limited solely to three issues:

- 1) Mr. Mosbaugh's mental state;
- 2) Whether the referral to the Corporate Concerns Program in Atlanta was a pretense; and
- 3) Whether or not intimidation of PRB members occurred.

Tr. 14120-21; 14227 (J. Bloch). Intervenor's proffered Findings of Fact on the issue, therefore, are outside the scope of the proceeding.^{85/}

With respect to Mr. Mosbaugh's mental state, Georgia Power suggests the FAVA issue represents a professional difference of opinion between Mr. Mosbaugh and others. Mr. Mosbaugh, however, was aware that Mr. Greene would be returning from SRO school, and viewed

^{85/} Similarly, the merits of the FAVA allegations, which have been addressed by the NRC Director's Decision (DD-93-08, supra, 37 N.R.C. at 343), is an issue outside the scope of the proceeding. It is interesting to note, however, that initially Mr. Mosbaugh did not know whether the NRC gave concurrence to the operation of the FAVA system. Tr. 9464 (Mosbaugh). Later in the hearing he stated that he contends the NRC should have issued a violation on FAVA and disagrees with the NRC's determination on the issue. Tr. 10182-83 (Mosbaugh).

the matter as a test of his professional abilities and his relative influence in the Georgia Power, Plant Vogtle organization.

The referral of Mr. Mosbaugh's concern to the Corporate Concerns Program in Atlanta followed a succession of events. In order for the Board to obtain some perspective on Georgia Power's handling of the matter, the following milestones are highlighted:

- 1) February 15, 1990, submission of FAVA concern, Int. Exh. II-231 at 1.
- 2) February 20, 1990, FAVA isolated and hold-tagged; George Bockhold directs Mr. Mosbaugh to personally investigate and resolve (if possible) his FAVA concerns. Int. Exh. II-231 at 4.
- 3) February 23, 1990, corporate managers (Birmingham) assigned to assist in resolving Mr. Mosbaugh's concerns. Int. Exh. II-231 at 5.
- 4) February 23, 1990, George Bockhold requests Bill Lyon (Quality Concerns Program at Vogtle) to determine whether any PRB members felt undue pressure. Int. Exh. II-231 at 6.
- 5) February 23, 1990, Mr. Gus Williams interviewed by Mr. Lyon. Mr. Williams confirms that at the time of the vote on FAVA in the PRB he felt undue pressure to vote early. He informs Mr. Lyon that he probably would have voted no had Mr.

Bockhold not been at the PRB meeting because he agreed with Mr. Mosbaugh that FAVA did not meet Regulatory Guide criteria.⁸⁶

- 6) February 27, 1990, Engineering Analysis proffered by corporate office (Birmingham). Int. Exh. II-231 at 11-13.
- 7) March 1, 1990, Mr. Mosbaugh presents his review of the FAVA system to the PRB. Int. Exh. II-231 at 14.
- 8) June 19, 1990, Chuck Whitney and Ken McCoy requested Corporate Concerns (Atlanta) to work with the plant in identifying and resolving any and all technical issues identified by Mr. Mosbaugh. Int. Exh. II-256 at 2.
- 9) June 21, 1990, meeting between Messrs. Lyon, Bockhold and Lee Glenn (Corporate Concerns [Atlanta]). Mr. Bockhold plans to have Mr. Glenn handle the concerns, and will tell Mr. Mosbaugh to begin working full time with Mr. Glenn. Mr. Glenn is to handle the concerns "to give the added insurance of independence." If

⁸⁶ Intervenor sets out Mr. Lyon's interview notes on page 236, fn. 104, of his Proposed Findings. Only a general reference is made to Int. Exh. II-231. A specific reference is Int. Exh. II-231 at 8-9. Key portions of the notes were redacted by Intervenor:

I [Lyon] told him [Mosbaugh] that I did not understand; that if he felt this way why then did he vote in favor of it's (sic) use? He explained that those items brought before the PRB are reviewed from a safety and health standpoint. Considering the placement of impingement barriers, he did not feel the safety and health of the public was at risk, resulting in a yes vote . . . that the general feeling was that George wanted to know the truth. In closing, Williams said if George wanted to discuss this further with him that he had no reservations about this and [was] willing to meet with him.

(Emphasis supplied.) The full text of Mr. Lyon's notes indicates that Mr. Williams voted "yes." He felt undue pressure to vote early, in part, due to the close proximity of Mr. Bockhold. In the absence of Mr. Bockhold he would have probably voted "no" based on the Unit's capability to meet Regulatory Guidance criteria. His "yes" vote was based upon the responsibilities assigned to the PRB.

assistance is needed, Mr. Glenn can request Mr. Lyon for assistance. Mr. Glenn requested to brief the NRC Resident of his involvement. Access to the Quality Concerns file should be limited to material submitted by Mr. Mosbaugh. Int. Exh. II-231 at 26.

- 10) June 21, 1990, meeting between Messrs. Mosbaugh, Bockhold, Glenn and Lyon. Mr. Mosbaugh is requested to devote his full time to working with Glenn. Mr. Mosbaugh is informed that the Concern file contents would only be available to him to the extent that he provided documents. Int. Exh. 231 at 27; Mr. Glenn advised Mr. Mosbaugh of his intent to let the NRC know of his involvement in reviewing his technical concerns. Int. Exh. II-256 at 3-4.
- 11) Messrs. Lyon and Glenn meet with the NRC Resident and informed him of Mr. Glenn's assignment to address technical issues raised by Mr. Mosbaugh. Id. at 5.
- 12) June 21 and 22, 1990, extensive discussions between Mr. Glenn and Mr. Mosbaugh regarding his technical concerns. Discussions are documented by contemporaneous, handwritten interview notes. Id. at 6-16.
- 13) July 3, 1990, Mr. Mosbaugh informs Mr. Glenn that he will only identify further Concerns to the NRC.^{87/}

^{87/} Mr. Mosbaugh has acknowledged that he informed Mr. Bockhold and later Mr. Glenn that he would only identify concerns to the NRC and does not dispute Mr. Bockhold's July 6, 1990 letter. Tr. 10573.

- 14) July 6, 1990, extensive listing of Mr. Mosbaugh's technical/managerial/regulatory concerns developed by Lee Glenn and provided to Ken McCoy. Int. Exh. II-256 at 19-21 (four specific FAVA concerns, with sub-issues listed).
- 15) July 6, 1990, memorandum from Mr. Bockhold to Mr. Mosbaugh requesting Mr. Mosbaugh to report any concerns which he has withheld from Georgia Power to the NRC. Int. Exh. II-197.
- 16) July 13, 1990, Mr. Mosbaugh memorandum to Mr. Bockhold: ". . . I will pursue (sic) my concerns with the NRC where I believe effective corrective actions will be forthcoming (sic) . . ." Int. Exh. II-179.

As the foregoing listing of activities indicates, Georgia Power sought an independent review outside the nuclear organization after Mr. Mosbaugh filed his Department of Labor Complaint in early June 1990. In Mr. Mosbaugh's opinion, any review by the corporate group in Birmingham would not be independent, since that would be part of the ordinary line organization. Tr. 10708 (Mosbaugh). It was Mr. Mosbaugh who later decided that cooperating with the Corporate Concerns group (Lee Glenn) was "inappropriate." Tr. 9458 (Mosbaugh). At the time the Corporate Concerns Program became involved, the NRC Resident Inspector was specifically informed of that involvement. The work product of the Corporate Concerns in developing Mr. Mosbaugh's technical concerns was detailed and straightforward. No evidence was presented that the Corporate Concerns program was less than diligent up to the point of time Mr. Mosbaugh expressly told his employer that he wished to pursue his concerns only with the NRC. The pursuit of Mr. Mosbaugh's concerns by Corporate Concerns was not a pretense. Insisting on his

participation after July 6 had the potential of being characterized as contrary to his wishes, retaliatory, and a form of harassment.

Mr. Williams was not called as a witness in this proceeding, nor was any testimony provided by affidavit, stipulation or otherwise. The only evidence of the possible impact on the FAVA vote resulting from the admitted "intimidation" is second-hand information, Mr. Lyon's note, which can be interpreted multiple ways. The technical explanation/rationale of Mr. Williams in the note to vote "yes" does not necessarily conflict with the NRC Inspection Report's view of his apparent testimony (again the Report contains second-hand information). In sum, Intervenor has failed to show an altered vote as a result of intimidation. It appears Mr. Williams made his own balancing between Regulatory Guide standards and the standards which he believed applied to the PRB's review of technical matters.

Nor is there support for Intervenor's view that Georgia Power's management did not promptly address this issue. Mr. Bockhold met with the PRB on March 1, 1990 and specifically addressed the issue of intimidation due to his presence. Tr. 13658 (Kitchens). Mr. Bockhold asked the voting members to also talk with their alternates. Tr. 13659 (Kitchens). After the issue arose again in August 1990, Mr. Bockhold requested the Quality Concerns coordinator at the plant to meet with all PRB members, in strict confidence. This was done. See discussion in Section V,R.iii, supra; GPC Exh. II-193; GPC Exh. II-194. Any evidence of intimidation, the Quality Concern coordinator found, pertained strictly to the FAVA quality concern. GPC Exh. II-194.

iii. "April 30, 1990 'Cowboy, Cavalier' Meeting" (Int. PF 437-461).

Intervenor's PF 440 does not make sense. It is true that Mr. Matthews testified at the hearing that between April 9 and April 30, 1990, there were a series of internal NRC meetings that were in response to his and the region's expressed concerns about the attitudes and communication problems reflected at Vogtle. Tr. 14851 (Matthews).

Intervenor's PFs 449-50 state:

Mr. Hairston believes that Mr. Ebnetter did not agree with the all of the comments made by other NRC personnel at this meeting. Tr. 13465-66, 13470 (Hairston).

Mr. Matthews testified that was no way that Georgia Power could have left the meeting not realizing that the comments were a collegial-held view of the NRC. And that there was no indication during the meeting from Mr. Ebnetter that he did not agree with what was being said. Tr. 14862 (Matthews).

This is an inaccurate representation of the testimony. While, Mr. Hairston did not believe that Mr. Ebnetter completely shared the view of the NRC comments made at the April 30 meeting, Mr. Hairston recognized that Mr. Ebnetter believed improvement was still needed. He testified: "my recollection is he had basically said there had been a lot of improvement. [However,] I don't believe that Stew [Ebnetter] would have said that Vogtle is where they need to be." Tr. 13476 (Hairston). Mr. Matthews testified that he did not recall whether there was any reason to believe that Mr. Ebnetter did not agree with the comments made at the April 30 meeting and that he did not recall whether Mr. Ebnetter had said anything at the meeting which indicated that he either agreed or disagreed with the NRC comments. Tr. 14862. Therefore, the testimony of Messrs. Hairston and Matthews does not conflict as Intervenor would have the Board believe.

Intervenor's PF 454 is confusing. For clarity, the testimony of Mr. Matthews was that "in terms of safety consciousness, I don't believe that the kinds of events ... we've been discussing [at the hearing] rise on the same scale as the ones that prompted the 4/30 meeting and were the source of our primary concern.... They were not of equal concern to the events that prompted the concerns we had in 1990. . . ." Tr. 14991.

Intervenor asserts that statements of Mr. McCoy in his 1993 OI interview reflect "the continued existence of the cowboy cavalier attitude among Georgia Power managers." Int. PF 458. He selectively quotes from that OI interview in Int. PF 459. Mr. McCoy's comments were made in June, 1993, prior to the time that Georgia Power received tapes and other documents withheld by OI. Therefore, his comments were made prior to the time that the Company was able to complete its assessment of what had occurred in 1990 relative to the diesel generator statements. His comments also reflect, to some extent, a level of frustration with an inability to resolve the issues concerning the diesel generator statements. Mr. McCoy was not able to appear at the hearing after his OI testimony was admitted into the record on September 8, 1995 and, therefore, he was not able to explain those statements. However, in all fairness to Mr. McCoy, the statements should be read in context with his other statements in that transcript excerpt, such as those quoted below:

Well, let me just state for the record that I believe that I did my best to understand why that occurred and to explain that, including -- actually George Hairston directed, but it was my people and I reviewed the data, a very comprehensive review of what the records were and why there was a problem. And that's what this [August 30, 1990] letter tried to characterize.

And that letter was prepared and reviewed by people that were involved with all that information. They did their best to do it. They

may not have satisfied the casual reader, that they can understand that. And I'm not sure that we really understand exactly what happened. You guys have been trying for three and a half years to understand what happened. But regardless, I think we did the best job that we could. And, quite frankly, it doesn't make any difference in terms of any relevant information.

The NRC was very much involved in all the testing on that diesel. They knew exactly what happened. They knew, as well as I did, the condition of that diesel and whether or not it was reliable. And all of this time and energy that we have spent on this thing -- I realize that there's reasons for doing it, but, quite frankly, you know I don't lose any sleep about whether we got to the bottom of why there was some confusion there. It's really not very significant.

First of all, it's been my practice and it was my practice throughout this thing to try and communicate clearly and openly and fully every bit of relevant information to the NRC as the regulator in their role regarding this. And I have seen nothing in anything that you all have presented to me or that I've been made aware of in this investigation that indicates otherwise to this point.

Secondly, this investigation and the amount of time that it has consumed of NRC personnel and the licensee's personnel that are responsible for operating the reactor plant -- this investigation has adversely affected the safety of the operation of the plant and has resulted in increased prices for the cost of electricity to all of the people served by that plant.

And I certainly hope that we will, when this thing is all over, try and learn some lessons from this thing. I know it's frustrating to you. It's frustrating to me to have spent this much time and effort and get down to this point and there is -- you know, there is nothing there. And you ask yourself -- I ask myself, "Why have we done this and how have we carried out our responsibilities" -- you as a regulatory authority and me as a licensee -- "to do our business well?"

And I just want that in the record. I think that this whole thing needs to be reviewed to show both of us, licensees and the regulator, can do our job better to avoid this needless waste of energy, time that is actually adverse to what we exist for.

Int. Exh. II-236 at 88-91.

Moreover, the NRC Staff, which is in the best position to assess Georgia Power's current management attitude, is satisfied that the problems of the past have been addressed and do not reflect bad character. See NRC PF 304-06.

Intervenor asserts that Georgia Power felt that NRC's comments in the April 30 meeting were wrong and took offense at the comments and did not believe that a problem existed but needed only to change the NRC's perception. Intervenor claims that a cavalier attitude continued after the April 30, 1990 meeting. Int. PF 459-61. Consistent with Intervenor's style throughout his findings, he omits significant evidence which contradicts his view. Mr. Hairston provided Rebuttal Testimony about the NRC concerns expressed during the April 30, 1990 meeting. He explained the actions which Georgia Power took in response to NRC's concerns, as follows:

We initiated meetings with the various Vogtle managers and other employees to inform them of the NRC's perceptions and to request their personal commitment to change those perceptions. As we viewed it, it is better to know about your potential problems than to be unaware of them. One of the key efforts was to articulate at these meetings the fundamental principles of nuclear professionals so that no one would fail to understand our expectations for reactor (core) safety and for soliciting assistance when addressing technical issues. We recognized that the NRC's perception had some merit based on historic events, including the Site Area Emergency, and my own observations of the organization when I became involved with Georgia Power nuclear operations in 1988. Intervenor's Exhibit II-5A is the outline that was prepared for the meetings. As that exhibit shows, all of the NRC's concerns were listed at the top of the outline, as unflattering as they were, to make sure the managers and employees understood and appreciated those concerns.

Several meetings were held to go over the NRC's specific concerns and to give some of the reasons for the concerns. We wanted to convey our standards of nuclear professionalism and operational safety. Mr. McCoy and I also recognized that there was a clear need for more and clearer communication between Vogtle management and NRC management. In addition to requesting the commitment of the managers and employees at these meetings to work to earn the respect of the NRC and to change the NRC's perceptions, we emphasized the need to continue to improve communication with the NRC. Our own managers, in turn, met with their functional groups and informed their staffs of the NRC's perceptions and concerns.

We also recognized that, in order to improve communication with the NRC, we needed to improve frankness within our own organization. During the Summer of 1990, we held several meetings with the managers for a direct -- no holds barred -- talk about the vital need for open, straightforward and clear communications within our own organization.....

In early January, 1991, Mr. Shipman (who was then the General Manager at the plant) reinforced the need for open communications in a letter to all Vogtle employees. He specifically addressed Mr. Mosbaugh's termination and the "fundamental responsibility of each employee" to identify issues which might adversely affect safety or health. [See GPC Exh. II-184]

With respect to communications with the NRC, we began a routine of meeting with our counterparts at the NRC periodically to ensure that our communication channels were working well. Licensing managers also initiated periodic "interface" meetings with their NRC counterparts in order to share information and to solicit the NRC's views about Georgia Power's plans, such as for Technical Specification changes. In December, 1990, the plant newspaper, entitled the "Vogtle Voice" included an article which explained the mission of the NRC and highlighted the Resident Inspectors. [See GPC Exh. II-185] Through example, we demonstrated the "community of interest" in full, open, complete and accurate communication between ourselves and with the NRC.

Hairston Rebuttal at 7-10 (emphasis added).

In addition, the comments that Mr. McCoy made during the May 8, 1990 meeting with plant personnel and which Mr. Mosbaugh taped reflect that Georgia Power's reference to NRC "perceptions" may have been the actual words used by the NRC in the April 30 meeting. Moreover, Mr. McCoy understood that NRC's comments weren't all "smoke" and that there was some "fire" there, i.e., there was some truth to what they were saying.

I think there's some fire there. I think there's more smoke than there is fire. I think there is, like I say, you know, I can go back and look at some of these events and the ones that bother me the most are the ones where we've had people either fail to get help when they needed it or try and do something without a procedure or without consulting with the expertise in management that they had available. Those are the ones that bother me the most. Those are the ones that I think we got the biggest real exposure of having a real problem with. There are some perceptions here, too, you know, we've had some personalities. I think I said I would tell you why the people they invited to this thing. The conclusion that I came to, this was based on a statement that Dr. Murley made. He said -- in his opening remarks, he said, you know, there's some personality issues that we, you know, were aware of here and that sort of thing. But he said, putting personalities aside, this is a general perception also. . . . but I think there have been some perceptions based upon some personalities and that sort of thing and I attribute part of the heavy smoke that's out of proportion maybe to the real fire here to some of our dealings in the past and we've got to work on that. So I have got to communicate completely, openly and clearly with Ken Brockman, our Region guy in Atlanta, on what's going on down here and that sort of thing . . .

GPC Exh. II-183 at 19-20.

On cross examination, Mr. Mosbaugh admitted that the purpose of the meeting was to ensure that managers and employees were aware of and responsive to NRC concerns. Tr. 9513. He also testified that Mr. McCoy agreed partially that the NRC had a basis for their comments. Tr. 9515-16 (Mosbaugh). Mr. Mosbaugh further admitted that Mr. Bockhold was open during the

meeting in stating that his management style may have been part of the problem with the NRC (Tr. 9517-18) and that the meeting with plant personnel was a good step by the Company (Tr. 9525). Based on the foregoing, the Board should reject Intervenor's negative characterization of Georgia Power's reaction to the April 30 meeting.

iv. "NRC's Communication Problems On Site" (Int. PF 462-471).

Intervenor's PF 462-67 set forth portions of Mr. Matthews' testimony addressing his communications problems with Mr. Bockhold prior to the April 30, 1990 management meeting. They appear to be relevant only as background to the discussion of the April 30 management meeting. However, based on these findings, Intervenor asserts "[i]t is highly distressing that Georgia Power management was aware of Mr. Bockhold's lack of effective communication toward the regulator yet did nothing about it for such a long period." Int. PF 467. Mr. Matthews, in fact, testified that Mr. McCoy was responsive to his concern when he discussed it with him in the Spring or Summer of 1990, which is probably the time when Mr. McCoy first understood the depth of Mr. Matthews' concern. Tr. 14843-46. Therefore, there is no basis on which to conclude that Georgia Power management was unresponsive to Mr. Matthews' concern, especially when, by the end of 1990, Mr. Bockhold was no longer a part of Vogtle line management. See GPC PF 662, n.141.

Intervenor's PF 469 states: "[t]he failure of Georgia Power to recognize Mr. Bockhold's performance failures could be indicative of a much larger corporate culture problem, vis-a-vis holding managers accountable. Tr. 15009 (Matthews)." Mr. Matthews' testimony in this regard should not be relied on by the Board since he was unable to state whether, in fact, it was

indicative of a larger problem. Such speculative testimony is not worthy of any serious consideration because, as Judge Bloch observed, "anything could be, so it doesn't get us very far." Tr. 15009.

Intervenor argues that Georgia Power's responses to the NRC's May 9, 1994 NOV were examples of a "continuation of the same kind of attitudinal concerns the NRC had during the 1990 time frame," citing the Vogtle Coordinating Group ("VCG") November 4, 1994 Evaluation, Conclusions and Recommendations (NRC Exh. II-50). Int. PF 470. He concludes that when this is taken together with Mr. Hairston's views of Mr. Bockhold's performance, it is "strong evidence that the problem persist [sic] to this day and that such error will be repeated." Int. PF 471. Intervenor's findings ignore Georgia Power's February 1, 1995 and Mr. Bockhold's February 13, 1995 submittals to the NRC (GPC Exhs. 202-03) and the modified NOV (NRC Exh. II-51), which was based on those submittals. Indeed, the prefiled testimony of NRC Staff witnesses, Messrs. Matthews, Skinner and Hood, explains that after reviewing the VCG's November 4, 1994 evaluation (NRC Exh. II-50) and the supplemental responses from Georgia Power and Mr. Bockhold it issued the modified NOV^{88/} and stated:

After careful consideration as to whether additional actions should be taken with regard to these individuals, the NRC considered that the actions taken by GPC, the lessons learned by GPC and the individuals as a result of being exposed to the NOV and DFI process, would result in GPC and the individuals conforming their conduct to avoid being the subject of similar NRC enforcement action. The NRC further recognized certain acknowledgments by Mr. Bockhold in letters dated August 5, 1994, and February 1, 1995, regarding his performance with respect to matters cited in the NOV, his request

^{88/} The cover letter for the Modified NOV also stated "[t]he NRC has reviewed your responses and found them to be detailed and helpful in providing additional information for consideration in this matter, and, to the extent of the Staff's knowledge, accurate." Staff Exh. II-51 at 2.

for certain training, and his commitments to complete this training and notify the NRC if he should be nominated for a line management position over licensed activities at any nuclear power plant. The NRC, therefore, concluded that no further action would be taken regarding these individuals. The NRC also issued letters to each of the individuals providing them a copy of the Modified NOV to emphasize the seriousness with which the NRC views the violations and associated performance failures.

Matthews, Skinner and Hood at 9-10; see also Tr. 15130 (Matthews). The Staff also testified that it had no basis for concluding that the proposed transferee, Southern Nuclear, lacks the requisite character, competence, integrity, truthfulness and candor to operate a nuclear facility. Zimmerman and Reyes at 7; NRC PF 310. Based on the foregoing, Intervenor's PF 470-71 should be rejected.

v. "Georgia Power's Unwillingness to Admit Materiality" (Int. PF 472-475).

Intervenor states that "Messrs. Hairston and McCoy stated that they did not believe the false statements and omissions from April 9th and June 29th communications were material." Int. PF 472.^{89/} Initially, we note that Mr. Hairston agreed that the diesel starts statement in the April 9 letter constituted a material false statement. Tr. 3612. Nonetheless, it is obvious that the statements of Messrs. Hairston and McCoy were made based on their personal views. See, e.g., Tr. 2891 (McCoy). This evidence does not appear to have any particular significance. It is clear that Mr. Hairston and Mr. McCoy understand the importance (i.e., materiality) that the NRC places on the inaccuracies in these documents. In its February 1, 1995 supplemental response to the NOV (GPC Exhs. II-202), which was signed by Mr. McCoy, Georgia Power stated:

^{89/} In support of this assertion, Intervenor claims that Mr. Hairston "stated that there was not a material omission" in the April 9 letter. Int. 473 citing Tr. 3685. Mr. Hairston didn't address the April 9 letter at Tr. 3684-85. Mr. Hairston did state, at Tr. 3612, that whether or not there was a material omission in the April 9 letter was a gray area.

We have already admitted that the April 9, 1990 letter was inaccurate, and withdraw our request for the NRC to reexamine the "materiality" of the inaccuracy. Even though some NRC representatives have indicated that the "start count" of diesel starts did not influence their views of the diesels' operability and could not reconcile the "count" number with the NRC's, the NRC reasonably could conclude that the April 9 letter had the capacity to be misconstrued by other representatives in the performance of their responsibilities. . . . We have admitted that the June 29, 1990 cover letter for the revised LER failed to correct the April 9 letter explicitly, and was materially incomplete in not identifying additional personnel error as a cause of the April communication errors. . . .

W. "Credibility of Georgia Power Witnesses" (Int. PF 476-481).

Intervenor states that the Board should find it difficult to give much weight to the testimonies of Messrs. Horton, Frederick and Stokes. Int. PF 476. Intervenor goes on to discuss the testimony of Messrs. Frederick, Stokes, Hairston, McDonald and Coursey. See Int. PF 477-512. Intervenor's attacks on Georgia Power witnesses is quite obnoxious given that his own findings are severely slanted towards his view of the evidence, contrary to the Board's instruction to the parties that the findings present a balanced view of the evidence. Tr. 9737. Moreover, throughout this proceeding, Georgia Power has identified numerous instances where Intervenor's statements to this Board are not to be believed, including in his prefiled testimony and during his cross examination at the hearing. Georgia Power's Reply Brief demonstrates numerous instances where Intervenor has been dishonest in his representations and characterizations of the evidence adduced at the hearing. Therefore, if the Board chooses to consider Intervenor's findings on credibility, it should likewise take into consideration the evidence demonstrating that Mr. Mosbaugh's claims are motivated by personal interests, are inherently untrustworthy, and should otherwise be rejected as unsupported by credible evidence.

Intervenor first attacks Mr. Frederick and attempts to characterize his testimony as a denial of what is captured on one of Intervenor's tapes. Int. PF 477-78. This is an inaccurate characterization. It is obvious upon reviewing Mr. Frederick's testimony at Tr. 4129-30 and 4149 that he drew a distinction between his state of mind when he made the statements on the May 2, 1990 tape and when the work associated with the critique team's effort was completed. For example, he testified that he recalled there were a number of meetings held when the recommended corrective actions were put on paper and finalized and changes were made, not to the document but more importantly to what would actually be accomplished. Tr. 4151 (Frederick). See GPC PF 653.

i. "Hairston" (Int. PF 482-490).

(a) "Hairston's View of Bockhold" (Int. PF 482-86).

Intervenor essentially implies that Mr. Hairston has a lack of credibility based on the premise that his opinion of George Bockhold's performance changed through the course of this proceeding. Int. PF 482-486. Intervenor's presentation of Mr. Hairston's view really consists of partial excerpts, characterizations of testimony and juxtaposition of Mr. Hairston's observations designed to convey Intervenor's slanted perception of Mr. Bockhold rather than Mr. Hairston's actual testimony. Mr. Hairston covered a broad range of topics in his discussion of Mr. Bockhold. They ranged from the specific (e.g., April 19, 1990 telephone conversations) to the more general (i.e., conservative decision making with regard to safety) to the highly subjective (e.g., personality and style). Undoubtedly his observations will be considered by the Board in the aggregate and in the context in which they were made.

During Mr. Hairston's April 20, 1995 testimony, Judge Carpenter asked the question of whether Mr. Bockhold was sufficiently aware of the condition of the diesels, including testing, to responsibly decide that they were operable. Tr. 3567-3571. Intervenor highlights Mr. Hairston's conclusion that Mr. Bockhold's overall performance with respect to the diesel operability issue was appropriate. Int. PF 482. But Intervenor fails to highlight Mr. Hairston's view of Mr. Bockhold's performance relative to the April 19th diesel start LER statement. With regard to that statement Mr. Hairston characterized Mr. Bockhold's performance as follows:

Now, that's not to go back, and say that maybe George at one point here was not a little bit too fast . . . when I listened to the tape of George on that [April 19] date and Ken [McCoy] asking, you know, George, do we have this number for whatever the question was, from this point -- this point? And George says, yes. Jimmy Paul verified it[.] It sounds pretty fast and it sounds pretty glib. But the thing is, I don't know what else he knew, who else he had talked to, and what he based that on. Now, going back and talking with George, we have determined that maybe a little bit more attention to detail in areas like that is something we could work on, and we're working with that.

But George's [overall] performance in this period of time was not outside of what I would consider the norm, based on my experience, and based on having been there.

Tr. 3569 (Hairston). Mr. Hairston also concluded that Mr. Bockhold's behavior was not reflective in some way of a lack of character. Mr. Hairston stated that greater attention to detail in the area of the diesel start statements made to the NRC would have been appropriate, but that he observed Mr. Bockhold addressing the technical problems and trying to get the factual information to straighten out the diesel start statement. Tr. 3575 (Hairston); Int. PF 483.

Intervenor omits a discussion of Mr. Hairston's July 13, 1995 testimony pertaining to Mr. Bockhold. Mr. Hairston repeated his view that with respect to the LER, Mr. Bockhold "went a little too fast." Tr. 9230. He also differentiated between Mr. Bockhold's overall competent performance as a manager and his performance on the LER. Tr. 9236.

When Mr. Hairston returned to the hearings in August 1995, he again testified with respect to the diesel start statement. He at first indicated that an average person would go triple check the numbers. Tr. 11549 (Hairston). Contrary to Intervenor's PF 484, however, he went on to question his own statement, and concluded that he was not convinced that he could agree that the average person would say "stop, wait, let's go triple check this [number]." He expressed uncertainty whether a sufficient "red flag" had been raised that the average person would have stopped and said "let's go check the number." Tr. 11549 (Hairston). He further testified that he had known Mr. Bockhold for three years as of 1990 and had had a lot of interaction with him. Tr. 11550. In hindsight, he observed that Mr. Bockhold could have done something differently and missed opportunities to do so with respect to the diesel start statement. But, Mr. Bockhold's overall performance was "conservative decision making," as was his basic mind set. Tr. 11551 (Hairston). Mr. Hairston also observed Mr. Bockhold's basic style: "high energy" (Int. PF 485) and with a "high respect for safety and wanting to do the right thing." Id. Consequently, Mr. Hairston cautioned "you can't necessarily judge people on isolated acts," and that he has "other wealth of information and background" pertaining to Mr. Bockhold. Tr. 11552 (Hairston).

When Mr. Hairston attended the hearing again in September 1995, he recalled Mr. Bockhold coming out of plant construction. In his opinion, Plant Vogtle from 1988 to 1990 had really

made some progress, and Mr. Bockhold was as supportive "as one could be." Tr. 13542-13544 (Hairston). Mr. Bockhold, in Mr. Hairston's estimation, did a lot of work towards this improvement and openness of communications and steadiness in making decisions. Tr. 13544; Int. PF 486. He acknowledged that Mr. Shipman substantially contributed to the progress which the plant made in these areas after 1990, which probably would not have been achieved if Mr. Bockhold had remained as the plant general manager. Tr. 13545-6. He went on to attribute the difference between Mr. Shipman and Mr. Bockhold as a matter of "different styles" being more effective in different environments, and not a lack of character or integrity, or of a lack of concern for nuclear safety, by Mr. Bockhold. Tr. 13546. Mr. Hairston also observed that Mr. Bockhold's personality could "come across as being a little arrogant," but "he's really not if you get to know him." Tr. 13547. Mr. Hairston attributes some of the 1990 NRC perception to a personality conflict between Mr. Bockhold and the Resident Inspector at the time. Tr. 13547-8.

(b) "Hairston's Alleged Selective Memory" (Int. PF 487-490).

Intervenor attempts to find great significance that Mr. Hairston testified he did not have a recollection of discussions concerning the number of starts during the April 19 telephone conference. Int. PF 487. Intervenor contrasts this with Mr. Hairston's testimony concerning the telephone call on April 19 with the licensed operator. Int. PF 488.

Mr. Hairston's relative strength of recollection regarding these particular issues is entirely understandable. He has a vivid recollection that he asked for verification of the "greater than 20" starts in the draft LER. Tr. 3617. He does not have a recollection of anyone raising a concern at the time he signed the LER about the accuracy of the 18 and 19 numbers, the accuracy of the

Confirmation of Action Letter, or the accuracy of the failure to state there were failures and problems. Tr. 3617; 3622 (Hairston). The evidence in this proceeding shows that Mr. Hairston had no substantive participation in the extensive discussions on the wording to be used in the LER. Messrs. Shipman and Stringfellow (those individuals who in the normal course would have presented him the final reviewed LER) considered the LER accurate and complete at the end of April 19 when they presented it to Mr. Hairston. In contrast, not only did he raise a question concerning the operators' actions upon entering the diesel generator building, but he also actively participated in discussions with one of the operators. GPC Exh. II-2 at 1-6. The greater degree and directness of his participation in this specific issue accounts for his greater strength of memory. Contrary to Int. PF 489, it is also appropriate that Mr. Hairston does not recall stating "we got the starts as reflected on Tape 58" (GPC Exh. II-2). With the passage of over five years since the underlying events, numerous witnesses, including Mr. Mosbaugh, testified that the tape recordings were the only source of their knowledge about events in 1990. See, e.g., Tr. 5771, 5782 (Aufdenkampe); Tr. 9186 (Mosbaugh); Tr. 6838-6839 (Greene). Mr. Hairston can hardly be expected to recall this snippet of conversation.

As a third example of Mr. Hairston's alleged "selective" memory, Intervenor represents that Mr. Hairston claimed he lacked specific knowledge about dew points. Int. PF 490. A citation Intervenor uses in his argument (Tr. 13498-99) pertains to Mr. Hairston's opinion of the "dew point" statement in the April 9 letter, not his knowledge concerning dew points. He stated that at the time (April 1990) he personally did not see any problem with the letter's statement, and reiterated that he knew that there were some faulty instruments, that there had been some initial reports that the dew points were higher, and that the issue had been resolved. Intervenor is wrong in

asserting that Mr. Hairston "claimed" that he was not knowledgeable about dew points. He was simply addressing his knowledge of a specific situation in April 1990. Furthermore, Mr. Hairston's extensive experience in the industry would not equate to specific knowledge about particular high dew point readings during the first week in April 1990, at Plant Vogtle. The Board should also note that he showed a general understanding of how calibration instruments may be verified for accuracy. Tr. 11591-11593.

Finally, Intervenor's citation to a generic letter from the NRC and testimony at Tr. 8814 is gibberish. On the cited transcript page, Mr. Mosbaugh was being questioned with respect to one of his demonstrative aids. The Generic Letter 88-14 Response of Georgia Power (Int. Exh. II-13) was admitted only to the extent it was discussed in testimony. See, Intervenor's List of Stipulations Related to Intervenor's Exhibits at 1 and 3, ff. 4738. The 1988 Generic Letter Response, then, was not admitted for the proposition that Mr. Hairston possessed detailed knowledge of dew point readings taken in 1990 or that he was an expert on dew points. Indeed, he expressly testified that he was not. Tr. 11591 (Hairston).

ii. "Stokes" (Int. PF 491-504).

Intervenor next attacks Mr. Stokes because he initially testified that he had not seen any water in the diesel generator pneumatic control system. Int. PF 478-81, 491-504. The Board had the benefit of observing the demeanor of Mr. Stokes when Georgia Power brought him back to the hearing to address this issue on September 14, 1995. See GPC PF 611. There is no doubt that Mr. Stokes was in error in his prior testimony. However, contrary to Intervenor's assertion that his error was intentional (Int. PF 504), his error was an innocent one. Moreover, Intervenor

has utterly failed to demonstrate that his allegations of water in the diesel air system has any merit. Indeed, the unreliability of his testimony was exposed when he could not reasonably explain why he did not raise the issue of water during the April 11, 1990 meeting he taped (Tape No. 41, GPC Exh. II-55A), just days after his alleged discussion of a "jar of water" with Messrs. Burr, Chenault and Stokes on March 30. See GPC PF 617. This may be one reason the "jar of water" story -- despite consuming hours of hearing time -- does not surface in Intervenor's findings.

Intervenor also states that Mr. Stokes "informed us that air quality would be indeterminate, during a one month period 'you went from a pristine condition to a condition with some rust or corrosion,' (Tr. 7077 (Judge Bloch), Tr. 7077 (Stokes))." Int. PF 497. Intervenor misrepresents the record. Mr. Stokes testified that rust would be an indication of some moisture, that it would be acceptable if no water were found in the air receiver, that he wouldn't want large amounts of rust in the system, and that he would want to correct that problem. Tr. 7076-78. Intervenor further states "in a quite surprising statement, [Mr. Stokes] stated that he did not agree with a comment he wrote on a deficiency card that if air quality was indeterminate so was diesel operability." Int. PF 497. Mr. Stokes actual statement was with reference to the acceptability of "dew point measurements," not "air quality." At the hearing, Mr. Stokes explained that a certain DC as written overstated the facts and that Vogtle procedures do not require that the diesel be declared inoperable if dew point measurements fall outside the 32F-50F range. Tr. 7063-65. Finally, Intervenor cites testimony of Mr. Stokes (Tr. 7270-71) to the effect that a dew point measurement can be taken even though a drier is turned off. It is obvious that Mr. Stokes merely states that it is physically possible to do it, not that it is the proper way to do it. Tr. 7271-72. Intervenor's attack on Mr. Stokes is unwarranted and should be rejected by the Board.

iii. "McDonald" (Int. PF 505-507).

Mr. McDonald, Intervenor would have the Board find, testified inconsistently in a September, 1990 deposition as compared to his testimony in this proceeding and to Georgia Power's July 16, 1993 Response to Intervenor's Second Set of Interrogatories. Int. PF 505 - 507. Intervenor can only make this allegation based on a glossy overview of the facts. An examination of the underlying testimony and other documentation shows that Mr. McDonald accurately recalled his role in reviewing LER drafts in April, 1990. He also explained the basis for the footnote in Georgia Power's April 1, 1991 2.206 petition response, and his testimony provides a likely explanation of why Mr. Shipman did not identify any inaccuracy in the various petition responses. See Section V.S., supra, concerning Georgia Power's 2.206 Petition Responses.

In this proceeding Mr. McDonald testified, after explaining that his answer would be partly "hypothetical" because it called for his "belief", that he did not review the LER as submitted, and that he reviewed a draft or drafts, and submitted comments. Tr. 11045 (McDonald). The evidence in this proceeding confirms his belief. GPC Exh. II-2 at 29-31. He did, as he surmised, review a draft for such things as nomenclature errors. Tr. 10467; GPC Exh. II-2 at 30.

Mr. McDonald also testified that he did not recall giving comments to Mr. Stringfellow, and doubted that he did. Tr. 10467. Contrary to Intervenor's assertions (Int. PF 506), this testimony is not inconsistent with Georgia Power's 1993 Interrogatory Response:

Mr. McDonald did review a draft of LER 90-006 and provided comments to someone, probably Jack Stringfellow, before the LER was signed by George Hairston. GPC believes Mr. McDonald's role was limited to a review of a draft of the LER and providing

someone with his comments. (Int. Exh. II-209, ff. 11049, emphasis supplied.)

Thus, the response does not stand for the firm proposition that Mr. Stringfellow personally received Mr. McDonald's comments, as Intervenor would like to assert.

In his 1990 deposition Mr. McDonald testified consistently that he could not recall discussing or having conversations about the LER: "the only conversation I recall was there was one that was due to be sent out." Int. Exh. II-208 at 3, ff. 11048. When asked what his "role" was in drafting the LER, reviewing the LER or changing the LER, Mr. McDonald stated, "I don't believe that I had a definable role towards activities." Int. II-208 at 4. Mr. McDonald testified in this proceeding about the meaning of this answer:

....it was not less than a complete response. I believe that it's completely consistent with what I have testified here, in that I did not have a specified review role [in LER reviews]. It was a practice between Mr. Hairston and I...I was not reviewing them for their submittal, but it was a way that we work together to, you might say, provide an overall concept of what was being said. I did not have a defined role. I did not sign anything that I had reviewed them; I did not submit any formal reports; I did not require any feedback.

Tr. 11047-8 (McDonald). Although Mr. McDonald's answer in 1990 was ambiguous, the ambiguity was obvious and cannot be characterized as "inconsistent" with his testimony before the Board.

Intervenor's PF 507 is a whopper. To demonstrate the subtle nature with which Intervenor spins the "facts", we trace development of this allegation. Intervenor asserts in the Proposed Finding that Mr. McDonald falsely testified that Mr. Shipman was not on "the call."

In the first portion of Int. PF 507, Intervenor states::

Mr. McDonald stated that when he asked Mr. Shipman if Mr. Hairston was on the call, he could not remember. Int. II-210, p. 25.
(emphasis supplied)

If the Board examined the citation, it would read testimony which, without careful examination, appears to support this portion of Int. PF 507:

....and then we asked people to try to find out who was on the last call.... and one was somebody else and I can't remember who it was.

Q. Mr. McCoy?

A. No.

Q. Mr. Shipman.

A. Mr. Shipman.

Q. Okay.

A. And when we asked those people, none of them could remember that George Hairston was on that very last call.

Int. Exh. II-210 at 4 (emphasis supplied). So far in this Proposed Finding 507, Intervenor is setting up the contrast with Mr. Shipman's testimony. "The call" is not specifically identified in it, because to do so would negate the contrast.

With the set-up of Mr. McDonald's testimony, Intervenor turns to Mr. Shipman's testimony. Mr. Shipman testified that he realized Mr. Hairston was on a (sic) April the 19th afternoon phone call. Tr. 11319. He stated, in a response to a question by Judge Bloch:

...I don't believe there was...was ever a time when I didn't recall Mr. Hairston was involved in -- in that conference call, and I think I --

I'm on record before as saying the reason I remember that one is -- is because it was unusual for Mr. Hairston to -- to walk into a conference call on the fourth floor and participate in it. Tr. 11322, emphasis supplied.

Now the Board can see the false contrast. Mr. McDonald was clearly referring to one call -- "the very last call" -- and Mr. Shipman to another -- the call which Mr. Hairston walked into. Intervenor refers to the former call as "Call B" and the latter call as "Call A," and has done so repeatedly in this proceeding. Intervenor must have known this difference when filing PF 507, and the Board should take note of this overzealous advocacy.

iv. "Coursey" (Int. PF 508-512).

Finally, Intervenor attacks Mr. Charles Coursey. At the hearing, Intervenor confronted Mr. Coursey with his deposition testimony which indicated that he heard "moisture" had been drained out of one of the lines of the diesel. Mr. Coursey explained that what he recalled was that there had some high dew point measurements taken on the diesel air receivers and that the air receivers had been blown down or subject to a bleed and feed process. In response to questions from Judge Bloch, Mr. Coursey also stated that "moisture" was drained out of the air receivers. Tr. 11182-83. Intervenor attempts to read Mr. Coursey's reference to moisture as a statement that he was aware of water coming out of the air receiver. However, it is clear that he was referring to high dew point air, as in moist air, and not liquid water. See Tr. 11184-88 (Coursey).

VI. "Diesel Generator Conclusion"

Contrary to Intervenor's conclusion, the Board should find that Georgia Power's Proposed Findings, the NRC Staff Proposed Findings, and the foregoing discussion in this Reply Brief have

clearly demonstrated that Intervenor has failed to satisfy his burden of going forward on the admitted contention, with respect to the diesel generator reporting issue, and Georgia Power has otherwise established that it and Southern Nuclear have the requisite character and competence in order for the Board to permit the Staff to issue the requested license amendments.

VII. "Air Quality - Findings Of Fact"

A. "Background: Diesel Generator Air System" (Int. PF 513-20)

Intervenor's discussion of the design and operation of the Vogtle diesel generator starting and control air system, while inartfully drafted, appears to be basically correct with one exception: Intervenor PF 519 is particularly difficult to follow, and it appears Intervenor misstates the lowest dew point rating capability for the Vogtle diesel air system dryers. The dryers are factory-set to produce a 35F dew point at design conditions, but can achieve dew points that approach 32F under certain actual conditions. See Int. Exh. II-243 at 2 (footnote 3). We also note that Intervenor copied, verbatim, GPC PF 445, 447, 448 and 450 as Intervenor PF 513, 517, 518, and 520, respectively.

B. "PSYCHOMETRY" (Int. PF 521-23)

Intervenor PF 522 asserts that diesel system air receivers were "normally warm to the touch" in the 1990 time period (citing Mosbaugh at 21). However, Intervenor fails to mention that at the hearing, Dr. Hill and Mr. Ward testified that the Vogtle air receivers were, contrary to Intervenor's position, not "warm to the touch."⁹⁰ Tr. 14318 (Hill); Hill and Ward at 8-9. Dr.

⁹⁰ We note that Intervenor seemed to make a distinction at the hearing between observations of Mr. Mosbaugh

Footnote continued on next page

Hill's and Mr. Ward's views were further confirmed by Board Exh. II-9, actual Vogtle diesel air receiver temperature data, which demonstrates that receiver shell temperatures were less than ambient temperatures, even within five minutes and 12 minutes after the compressor had cycled off.

Moreover, Intervenor embellishes PF 522 with information not included in the record, namely that "warm to the touch" means 90F or higher. At the hearing, Intervenor was not as willing to quantify air receiver temperatures at Vogtle in such absolute terms. Rather, he guessed that the air receiver temperature "depending on the conditions, but could easily be 90 degrees Fahrenheit, there in that general range, plus or minus 10 degrees or so." Tr. 10228 (Mosbaugh). The conditions which Intervenor must have been referring to are the ambient condition of the diesel room and the diesel air compressor cycle frequency. Tr. 10434-35 (Mosbaugh). By far, the most important of these two conditions is the ambient temperature of the diesel room. Hill and Ward at 8-9. When the compressor stop running, the air receivers quickly return to ambient room temperature. *Id.*

Intervenor's embellishment carried to its logical end is that since the receivers were warm to the touch²¹⁷ in 1990 and warm to the touch means 90F or higher, then the Vogtle air receivers had temperatures of 90F or higher year round in 1990. Curiously, Board Exh. 9 shows receiver shell contact temperatures below 90F when the ambient temperatures were above 90F.

Footnote continued from previous page

and Dr. Hill in that Mr. Mosbaugh's occurred in 1990 and Dr. Hill's occurred in 1995. Tr. 14318 (Hill). However, Intervenor failed to adduce any evidence that something transpired between 1990 and 1995 that would change this physical phenomena.

²¹⁷ We note that Intervenor has now decided to add the caveat that this was the case in 1990, while the testimony upon which this claim is based does not make this distinction. This is obviously a thinly veiled attempt to overcome the testimony of Messrs. Ward and Hill by implying that the receiver temperature in 1990 would be different than 1995.

Moreover, during the important time frame of March to April 1990, it is hard to imagine how Intervenor's logic could withstand close scrutiny. Intervenor testified that March 20 was the coldest day of the month, below freezing. Mosbaugh at 12. He also testified that "cold blasts" of air were being drawn into the room by the diesel room ventilation system, causing cooling below the 50F diesel room design temperature. Mosbaugh at 20-21. Dr. Hill explained that the diesel generator rooms were thoroughly heated and well insulated, with electric heaters mounted on the diesel room walls set to turn on when room temperature drops to 60F. Hill and Ward at 7. In addition, Dr. Hill explained that the diesel room ventilation system does not activate until the room temperature reaches 85F. *Id.* Thus, it is hard to imagine how the air receivers could have been at "90F or higher," as asserted by Intervenor, in the March to April time frame.

As is evident throughout this finding, and those that follow, Intervenor has a strained view of what constitutes balanced findings, and in this instance, Intervenor ignores significant evidence -- testimony and confirmatory *in situ* data -- which overwhelmingly refutes Mr. Mosbaugh's position.

C. "Acceptance Criteria" (Int. PF 524-25)

Intervenor first abandons his hearing position that Georgia Power was required to meet the air quality standards contained in Instrument Society of America Standard S7.3-1975 for the Vogtle diesel air system (*see* GPC PF 456) and shifts his position on air quality standards to Georgia Power's Final Safety Analysis Report ("FSAR") commitment to design the diesel air system such that it produces dew points at 50F or below (*see* GPC PF 459).

Intervenor PF 525, without any citation to the record as a basis, sets up the "straw man" to be knocked down in the argument to follow. It defines "unsatisfactory air quality" as the presence of water in the diesel air system or diesel air system dew points above 50F. Georgia Power PF 592-618 address Intervenor's assertion that water was detected in the diesel air system and Georgia Power's PF 535-547 address Intervenor's assertion that dew points below 50F are the only means for demonstrating satisfactory air quality.

D. "Dew Point Measurements" (Int. PF 526-30)

Intervenor PF 529 mischaracterizes the testimony upon which it is supposedly based. First, Intervenor asserts that "[m]aintaining satisfactory air quality is essential to prevent corrosive effects and to prohibit extremely small orifices . . . from becoming blocked." Intervenor relies upon Mr. Stokes' testimony as his basis for this assertion.^{92/} Mr. Stokes simply explained possible effects moist air might have on the diesel pneumatic controls, making clear that he was speaking hypothetically and that no such effects had ever been observed at Vogtle. Tr. 7153-54 (Stokes).

Second, Intervenor PF 529 asserts that "operation of the diesel trip circuitry [would] become[] unpredictable" if water should enter the diesel control logic boards. Intervenor misrepresents the question asked of the witness. Mr. Stokes was asked to speculate as to what might happen if the logic board orifices were blocked by water (Tr. 7156-57 (Stokes)), not what might happen if water merely entered the logic board. Furthermore, Mr. Stokes did not say that the diesel trip circuitry would become unpredictable. Rather, he stated that such a situation had never

^{92/} Ironically, Intervenor's counsel specifically attacked Mr. Stokes' qualifications in this area during cross-examination, highlighting the fact that Mr. Stokes has no chemical or corrosion engineering background. Tr. 7102, 7154, 7157 (Stokes).

occurred so any answer he might provide would be a hypothetical guess, which he did not venture. Tr. 7158-61 (Stokes).

Intervenor PF 530 grossly mischaracterizes the evidence regarding Georgia Power's approach to ensuring satisfactory air quality and Georgia Power's licensing requirements related to satisfactory diesel air quality. First, Intervenor implies that while Georgia Power told the NRC that the diesel air system dew point acceptance criteria was a 50F (or less) dew point, in reality the acceptance criteria was whether or not water was detected in the receivers. This is, of course, a misleading oversimplification of Mr. Stokes extensive testimony on this topic. In truth, Mr. Stokes explained to the Board that Georgia Power performed periodic dew point checks on the receivers and attempted to meet the dew point acceptance criteria. However, on occasion, the dew point measured was higher than 50F. When that happened, corrective actions were taken to address whatever problem might exist with the air dryer, but as an alternative means for ensuring acceptable air quality, the receivers were blown down to check for moisture and the control air filters were inspected. The ultimate decision regarding whether diesel operability was affected turned on whether moisture was detected in the air system. Tr. 700^o, 7014-16, 7039-41, 7063, 7065 (Stokes).

Next, Intervenor resorts to elaborate sophistry in an attempt to imply that Georgia Power somehow violated NRC licensing requirements in the way it determined diesel air quality was satisfactory. Intervenor first creates an undefined category of NRC licensing requirements, which he terms "safety commitments." He then asserts that Georgia Power improperly deviated from the dew point acceptance criteria "safety commitment" by relying on air receiver moisture checks

when dew point measurements exceed 50F. He then asserts that "safety commitments," when deviated from, necessitate a formal 10 C.F.R. § 50.59 safety evaluation as well as NRC approval.

Intervenor is incorrect.

The diesel generator starting system is addressed in Section 9.5.6 of the FSAR. Hill and Ward Rebuttal at 2-3; Board Exh. II-3. FSAR Table 9.5.6-1 (Sheet 1) lists, as a dryer design specification, 50F as the dew point of air leaving the dryer. This design was accepted in Section 9.5.6 of the NRC Staff's Safety Evaluation Report. Hill and Ward Rebuttal at 3; Board Exh. II-4. In its response to NRC Generic Letter 88-14 (Int. Exh. II-13), Georgia Power stated that the design maximum dew point acceptance criteria for the diesel air start system is 50F at system pressure and references FSAR Table 9.5.6-1. Hill and Ward Rebuttal at 5; Int. Exh. II-13 at 5. This design maximum was tested as part of Vogtle's preoperational test program, which confirmed that the air system could meet this design requirement. Int. Exh. II-13 at 5-6. Both the FSAR section and the Generic Letter 88-14 response address diesel air system design capability requirements. They do not address nor limit Georgia Power's means for verifying diesel operability. As discussed above (GPC Reply to Int. PF 530), Mr. Stokes testified that the dew point checks are the primary means for ensuring acceptable diesel air quality but diesel operability is ultimately determined by receiver moisture checks and control air filter inspections when dew points are out of specification.

Contrary to Intervenor's assertion, no safety evaluation is required because no changes are being made to the facility or procedures as described in the FSAR. See 10 C.F.R. § 50.59. The

NRC Staff acknowledged the acceptability of this approach in response to Intervenor's interrogatories. Int. Exh. II-72 at 11-12.

VIII. "[Alleged] False, Misleading, and Incomplete Statements to NRC Pertaining to Air Quality"

A. "April 3, 1990 IIT Conference Call" (Int. PF 531-536)

Intervenor PF 531 is purely argument with no supporting factual references. Georgia Power agrees that the NRC was interested in determining whether diesel air quality may have contributed to the problems associated with the diesel generators during the 1990 Site Area Emergency. However, Intervenor's assertion the Georgia Power provided false information to the NRC on April 3, 1990 regarding air quality is unsupported by the evidence as discussed below.

i. "March 28 IIT Conference Call" (Int. PF 532)

Intervenor PF 532 contains several factual errors. First, the March 28, 1990 meeting between Georgia Power and the NRC IIT representatives was held in the Vogtle administration building auditorium and was not a conference call as stated by Intervenor. See GPC Exh. II-49; see also GPC PF 471. Second, there were several more participants on behalf of Georgia Power in addition to Messrs. Bockhold, Burr, and Kochery but, given that the focus of these findings is diesel air quality, the only additional Georgia Power participants of interest were Messrs. Holmes and Frederick. See GPC Exh. II-49. Third, Intervenor misidentifies NRC representative Mr. Hunt as Mr. Holmes. Id.

Intervenor PF 532 is riddled with misrepresentations of the evidence as well. Intervenor asserts that as part of its air quality assessment, Georgia Power "agreed to take new dew point

readings and to run a batter (sic) of tests on the air system."⁹² Intervenor also interjects, in a footnote, that no testing other than one dew point reading was performed on EDG 1A until after April 5. In actuality, the March 28 meeting described in this finding addressed a number of matters in addition to air quality. See GPC Exh. II-49 for a partial transcript of the meeting. The meeting lasted for over two hours and the first mention of air quality was near the end of the meeting. Georgia Power told the NRC that dew point checks were performed and committed to get the NRC information regarding the last dew point test results. Id. at 96. Mr. Bockhold assured the NRC that another dew point check would be added to the extensive testing already planned for the diesel air system (Id. at 96), that Georgia Power would look at INPO guidelines to see if other testing was recommended for air systems (id. at 97) and that Georgia Power would "run a battery of tests" on the diesel air system (id.). It is clear from the context of the meeting that the battery of tests referred to the extensive control air testing referred to by Messrs. Chaffee and Holmes and just described to the NRC over the course of the two hour meeting (see id. at 95) and included, for example, air logic system testing, bubble testing, and sensor testing. See GPC Exh. II-105. There is no dispute that Georgia Power actually performed these tests and, therefore, Intervenor's footnote is nonsensical.

ii. "March 29 Dew Point measurements" (Int. PF 533-534)

Intervenor PF 533 asserts that the March 29, 1990 dew point readings on EDG 1A demonstrated unsatisfactory air quality. This assertion is not supported by the record.⁹³ Intervenor's reference to Tr. 6464 (Bockhold) for support is a misrepresentation because Mr. Bockhold's

⁹² Georgia Power disagrees with Intervenor's self-serving definition of "unsatisfactory air quality." See GPC's Reply to Int. PF 526-530, supra.

testimony was that the dew point instrument indicated a high moisture content in the receivers, but did not equate that to mean that the air quality was necessarily unsatisfactory.

Intervenor PF 533 relies solely on Mr. Briney's testimony in an attempt to establish that Mr. Bockhold and the Event Critique Team knew about the March 29 EDG 1A dew point measurements on or about March 29. Mr. Briney actually testified that he did not recall the exact time frame in which he reported the information to the Critique Team (Tr. 12158) and that he believes Mr. Bockhold would have been informed about the March 29 measurements, but he does not recall the exact time frame that occurred. Mr. Briney explained that he could not recall exact dates, "...that time line, it's just not there in my memory." Tr. 12159 (Briney). Further, contrary to Intervenor's assertion, Mr. Briney did not testify that he reported the March 29 dew point readings to Mr. Bockhold. Rather, he simply states that Mr. Bockhold would have been informed about the readings. See Tr. 12158-59 (Briney). Mr. Bockhold testified that he did not know about the March 29 readings on April 3, 1990 when he participated in a conference call with IIT members. Tr. 6460 (Bockhold). Moreover, Mr. Bockhold testified, and recorded contemporaneous statements confirm, that he first learned of the March 29 readings on April 5, 1990 when NRC inspector Milt Hunt brought it to his attention. Bockhold Supp. at 2-3; GPC Exh. II-51 at 4; GPC Exh. II-55A at 9.

Intervenor PF 533 also misrepresents Mr. Stokes' testimony, implying that Mr. Stokes stated that the March 29 readings were reported "at a daily morning meeting." What Mr. Stokes actually testified was that he probably would have been informed about the March 29 readings at some point, but was not sure when, and that the most likely way this type of information would

have been disseminated at the plant was the morning plant status meetings.⁹⁴ Tr. 7005-07 (Stokes).

Intervenor PF 534 misrepresents Mr. Briney's testimony. Mr. Briney testified that either Mr. Bockhold or the Event Critique Team or both instructed him to investigate the March 29 dew point readings. Mr. Briney also testified that he had numerous phone calls with Mr. Bockhold but not "constant phone contact" as asserted by Intervenor. Tr. 12162-63 (Briney).

Intervenor PF 534 also misrepresents Mr. Hammond's testimony. Intervenor implies that Mr. Hammond testified he called Mr. Bockhold at Mr. Bockhold's home throughout the March and April 1990 time frame. In fact, Mr. Hammond recalled one specific day (Sunday, April 8, 1990) when he called Mr. Bockhold at home because not many people, including Messrs. Bockhold and Briney, were at Vogtle that day. Tr. 12857, 12909 (Hammond); Int. Exh. II-217 at 7. Also, Intervenor's footnote 113 mischaracterizes Mr. Hammond's testimony by implying that every discussion he had with Mr. Bockhold during the March to April time frame centered on suspected high dew points rather than a suspected faulty instrument. However, the testimony is clear that Mr. Hammond was referring to a limited period of time when Georgia Power first began to check the Alnor readings with the EG&G instrument. Tr. 12858-59 (Hammond).

Intervenor PF 534 makes two minor misrepresentations associated with Mr. Kitchens' testimony. First Mr. Kitchens did testify that he probably learned, within a day or two, of the March 29 dew point readings (Tr. 13706), but he also said that it may have been as late as April 6 before

⁹⁴ Georgia Power notes that Mr. Stokes signature on Block 26 of the preventative maintenance work order discussed at Tr. 7005 does not indicate Mr. Stokes knew about the March 29 readings on the date he initialed the block. Rather, his initials indicate approval and release prior to the work being performed. It should also be noted that Intervenor PF 533 also misidentifies Mr. Kendall as Mr. Hunt in footnote 112.

he learned of them, he just simply does not recall. Tr. 13706, 13739 (Kitchens). Second, Mr. Kitchens testified that he (not Georgia Power as asserted by Intervenor) had no reason not to believe that the March 29 dew point readings were valid when he participated on the April 9 IIT conference call (GPC Exh. II-61). Tr. 13737 (Kitchens). Georgia Power did have a reason to believe they were invalid. See GPC PF 490-492.

iii. "April 3, 1990 IIT Conference Call" (Int. PF 535-536)

Intervenor PF 535 is incomplete in that it implies Mr. Bockhold told the IIT that the only testing to assess air quality was "a test for `moisture...." Mr. Bockhold also stated that the air quality tests included filter inspections. GPC II-50 at 60. The proposed finding is also slightly misleading in that it implies Mr. Bockhold stated "quality of air is now satisfactory" when, in fact, those words were used in a question posed by one of the NRC representatives. Id.

Intervenor PF 536 is pure argument and hyperbole and is not in accord with the evidence discussed above. See reply to Int. PF 533, at 218-20 supra; see also NRC PF 225-228, 232, 275-280; GPC PF 474-478. In addition, Intervenor's footnote 114 misrepresents Mr. Bockhold's testimony by failing to mention that the reason Mr. Bockhold did not tell the NRC about the high dew point readings on April 3 was because he did not know about them until April 5. Tr. 6460 (Bockhold).

B. "[Alleged] Misleading Statements Concerning Self-Reporting of Unsatisfactory Dew Point Readings" (Int. PF 537-541)

Int. PF 537-541 are pure argument and sophistry under the guise of proposed factual findings and have no evidentiary foundation whatsoever. These specious findings, while imbued with

great imagination, demonstrate the great depths to which Intervenor is willing to sink to impugn the character of Georgia Power and Southern Nuclear.

The NOV Response statement to which Intervenor refers in Int. PF 537, was an attempt by Georgia Power to explain to the NRC what the term "initial reports" was intended to mean as that term was used in the April 9, 1990 letter. It is strained and unreasonable to infer that Georgia Power was somehow attempting to claim and take credit for "self-reporting" the high March 29 readings to the NRC in this response. The question of who discovered and reported the high dew point readings first was not an issue in the NOV. Georgia Power had no motive or reason for claiming it "self-reported" the high dew point readings.

The portion of Mr. Bockhold's June 1, 1995 pre-filed testimony referred to by Intervenor is a description of the discussions Mr. Bockhold had with NRC personnel regarding diesel air quality. Bockhold Supp. at 1-3. Of course, Intervenor conveniently fails to mention that Mr. Bockhold recalled that the IIT was apparently already aware of the March 29 high dew point readings (*id.* at 2), that Mr. Hunt, who brought the high readings to Mr. Bockhold's attention (GPC Reply to Int. PF 533, at 218-20 *supra*), was not a member of the IIT and was not on the April 6 telephone conference (GPC Exh. II-51 at 2), and that Georgia Power's witnesses Messrs. Hunt and Briney testified that Mr. Hunt discovered the high dew point readings and brought them to Georgia Power management's attention. See Affidavit of Milton D. Hunt (Tr. ff. 4882) at 5; Briney Rebuttal at 4-5; *see also* NRC PF 301; GPC PF 475-477.

Thus, Intervenor's construction of the NOV response and pre-filed testimony of Mr. Bockhold in Intervenor PF 538 is unreasonable and without merit. None of the actions referred

to by Intervenor is consistent with his preposterous assertion that Georgia Power was somehow taking credit for "self-reporting" the March 29 readings.^{95/}

Intervenor PF 539 is worded in an ambiguous and misleading fashion. Georgia Power technicians were obviously the first to detect the March 29 high dew point readings when they executed MWO 19001513. See GPC Exh. II-155; GPC PF 472. Intervenor inaccurately summarizes Mr. Briney's testimony in footnote 116. Mr. Briney's testimony, more accurately summarized, was that Georgia Power took dew point readings on all eight air receivers because of the NRC's interest in the March 29 high dew point readings on EDG 1A.^{96/} Tr. 12235-36 (Briney). However, the evidence indicates that Georgia Power was taking appropriate steps to investigate and resolve the March 29 EDG 1A readings by issuing MWO 19001651 on March 30, 1990, irrespective of the NRC's interest. Briney Rebuttal at 5; Int. Exh. II-143. Finally, regarding Intervenor's mysterious notation in footnote 116 that MWO 19001513 was initially marked as "satisfy" in Block 38, it is clear from the MWO that it was simply an innocent mistake that was promptly corrected (the correction is initialed and dated 3-29-90) and the corrective MWO 19001651 was initiated on 3-30-90, long before Mr. Hunt raised the issue.

Intervenor PF 540 is misleading in that Mr. Bockhold did not admit anything contrary to his pre-filed testimony as asserted by Intervenor. Mr. Bockhold readily acknowledged that he

^{95/} Intervenor footnote 115 misconstrues Mr. Ward's pre-filed testimony. Any fair reading of the testimony cited does not lead the reader to conclude Georgia Power was somehow claiming it "self-reported" the March 29 dew point readings. Such an assertion is simply absurd.

^{96/} The clear inference in Mr. Briney's testimony is that the four Unit 2 air receivers were included in the review because of the NRC's interest.

first learned of the March 29 dew point readings from an NRC inspector, but this information is not contrary to his pre-filed testimony. Tr. 6566-68 (Bockhold).

Intervenor PF 541 is conjecture on the part of Intervenor and without evidentiary foundation. See NRC PF 301.

C. "April 6, 1990 IIT Conference Call" (Int. PF 542-554)

Intervenor PF 542 is pure argument and conjecture. Intervenor offers no citation to the record for any of his conclusions. The proposed finding is misleading, in that Georgia Power did not "systematically advise the NRC that high dew point readings were the result of faulty instrumentation." Rather, the evidence demonstrates that Georgia Power kept the NRC informed about dew point readings while indicating its belief that the readings did not reflect an actual high dew point condition, but were suspected to reflect a faulty instrument. See GPC PF 478, 503-509.

Intervenor PF 543 is misleading. The proposed finding inaccurately summarizes Georgia Power's April 6, 1990 telephone conference call with the NRC's IIT. See GPC Exh. II-51. First, Mr. Bockhold did advise the NRC that the evidence is tending to point to a bad instrument, but only after Mr. Bockhold made clear that this was speculation on his part at that point in time. Any fair reading of the IIT telephone conference transcript clearly indicates that Mr. Bockhold is providing his best guess as to what is going on and is not making an emphatic statement as suggested by Intervenor's finding. Id. at 5. Intervenor's finding fails to reflect that Mr. Bockhold informed the IIT of a number of steps that had already been taken including a check with the vendor to find out the appropriate procedure to follow in addressing the potential high dew point condition. The vendor recommended to do a "feed and bleed" on the receiver tank and to check for the

presence of moisture by blowing down the receiver and other low points in the air system. Id. at 5-6. Finally, Mr. Bockhold told the IIT that Georgia Power was attempting to find another instrument so that testing could be done with a different instrument. Id. at 6.

Intervenor also mischaracterizes Mr. Bockhold's statements by implying that he told the IIT there was no other dew point instrument on site. Mr. Bockhold told the IIT that Georgia Power was attempting to find another instrument and that maintenance department personnel were attempting to borrow an instrument from a Georgia Power fossil plant, or possibly buy one in the local area. Id. at 7. Mr. Bockhold did not directly say, as implied by Intervenor, that there was no other dew point instrument on site. Rather, it's clear from the discussion that Mr. Bockhold was communicating that Georgia Power did not have another instrument like the one they were currently using (i.e., an Alnor). Other evidence in the record supports Mr. Bockhold's statements in that the instrument being used at the time was the Alnor VP-2466 and, in fact, there was no other Alnor instrument on site at the time. See Briney Rebuttal at 2.

i. "Concealing Existence of Back-up Dew Point Analyzer"(Int. PF 544-546)

Intervenor PF 544 makes a false assertion. Mr. Bockhold did not inform the IIT there was no "backup instrument" at the Vogtle site as claimed by Intervenor. Rather, the IIT transcript (GPC II-51) clearly shows that Mr. Bockhold indicated Georgia Power did not have another instrument like the one they were currently using. The instrument that had been used to obtain the high readings at that time was an Alnor VP-2466. See Int. Exh. II-169. Even if one reads the IIT transcript to say Bockhold denied that Vogtle any kind of backup instrument, there's still no evil intent demonstrated. There is nothing to support the inference that Mr. Bockhold knew about the

EG&G VP-1114 instrument at the time he participated in this telephone conference call with the NRC on April 6, 1990.

Intervenor PF 545 mischaracterizes the evidence. While, Mr. Hunt testified he did not specifically recall seeing GPC Exh. II-52 (Tr. 4932-33), he did recall seeing a list similar to GPC Exh. II-52 before he left the Vogtle site on Saturday, April 7, 1990 (Affidavit of Milton D. Hunt (ff. Tr. 4882) at 5) and recalled that "during the period I was there, there were several people [who] came down and tried to use both the Alnor and the other equipment" (Tr. 4925). Mr. Hunt was certainly knowledgeable about the high dew point readings on all the air receivers with multiple instruments and about Georgia Power's suspicion that it was an instrument problem, not an actual high dew point condition. Tr. 4925, 4928-30 (Hunt). He also knew that Georgia Power planned to borrow an instrument from V.C. Summer (he suggested it) and would provide the dew point readings to the NRC at the planned April 9 meeting. Tr. 4925 (Hunt). See also NRC PF 242-243.

Intervenor footnote 120 mischaracterizes Mr. Kendall's testimony. He did not state that he never saw GPC II-52; rather, he stated that he did not recall seeing it. Tr. 5020 (Kendall).

Intervenor PF 546 draws a conclusion based on inferences and conjecture not supported by the record. Intervenor conveniently ignores direct evidence from the April 9 meeting that Georgia Power told the NRC about VP-1114. Notes taken at the April 9, 1990 meeting by the Vogtle Licensing Manager, Mr. James Bailey, indicate that Georgia Power informed the NRC that Georgia Power had used a "bad" dew point instrument, but obtained another instrument from the V.C. Summer plant and learned how to use Georgia Power's "back-up" instrument. See Int. Exh.

II-70 at 4-5. Intervenor conceded that Mr. Bailey's April 9, 1990 notes (*id.*) indicate that Mr. Bockhold told the NRC at the April 9 meeting that site personnel had been using the "back-up" instrument (i.e., VP-1114) incorrectly when it gave high readings on April 5-7. Tr. 8784-86 (Mosbaugh).

ii. "Improperly Asserting that High Dew Point Readings were Attributable to a Defective Analyzer (VP-2466)" (Int. PF 547)

Intervenor PF 547 mischaracterizes Mr. Bockhold's statements made on the April 6 IIT conference call (GPC Exh. II-51). First, Mr. Bockhold clearly had not "concluded," as asserted by Intervenor, that VP-2466 was defective. Rather, Mr. Bockhold stated "at this point -- and this is speculation on my part -- the evidence is tending to point to a bad instrument" *Id.* at 5. Next, Intervenor inaccurately summarizes the order and content of observations provided to the IIT by Mr. Bockhold regarding the basis for his speculation. The April 6 transcript reflects Mr. Bockhold first indicated that the VP-2466 gave high readings on air systems with similar conditions but gave accurate readings on systems with significantly different conditions, namely the turbine building instrument air system. *Id.* Mr. Bockhold next explains they checked for moisture in the EDG 1A air receiver and on one of its air line low points, and checked the dew point on the EDG 1B receivers. *Id.* at 5-6.

(a) "Temperature and Pressure Deficiency of VP-2466" (Int. PF 548)

Intervenor PF 548 also mischaracterizes and inaccurately summarizes Mr. Bockhold's statements on the April 6 conference call. *Id.* at 5. As discussed above, Intervenor ignores the fact that Mr. Bockhold first indicated that the VP-2466 gave high readings on diesel air systems with similar conditions but gave accurate readings on the turbine building instrument air system

which has significantly different conditions. Id. Then, Mr. Bockhold speculates that the instrument may not work correctly at the diesel air system temperature and/or pressure. Id.

(b) "1B Diesel Air Receiver Readings" (Int. PF 549)

Intervenor PF 549 not only mischaracterizes and inaccurately summarizes Mr. Bockhold's statements on the April 6 conference call (id. at 6), but also inaccurately summarizes EDG 1B dew point testing data. Mr. Bockhold told the conference call participants that EDG 1B dew point readings were high and that Georgia Power planned to take dew point readings on the Unit 2 EDGs, but he suspected the Unit 2 dew point readings would be high also because he believed the VP-2466 was providing defective readings. Id. Intervenor then claims that in-specification readings were taken on EDG 1B on April 2, 1990. However, Int. Exh. II-169 at 3 clearly shows that no dew point readings were taken on EDG 1B on April 2, 1990. Intervenor's factual errors invalidate his strained conclusion that VP-2466 was consistently providing in-specification valid readings, and the April 6, 1990 IIT transcript (GPC Exh. II-51) documents ample support for Mr. Bockhold's speculation at that time that VP-2466 may have been providing erroneous readings.

(c) "Observations of Plant Operations" (Int. PF 550)

Int. PF 550 omits Mr. Bockhold's statement that Georgia Power also checked for moisture at a diesel air line low point. Id. at 5-6. Intervenor also asserts that hearing testimony adduced "that in the March-April 1990 time frame, the diesel air receivers were warm to the touch, indicating an internal temperature of 90 F or higher."²⁷ As discussed above, in GPC's Reply to

²⁷ Georgia Power observes that Intervenor's pre-filed testimony directly contradicts Intervenor's new assertion that the air receiver temperature was 90F or higher. Intervenor earlier indicated that when the dryers were not operating, as he claims was the case in the March 29 to April 7, 1990 time frame (see Int. PF 581), "the dew point would be what ever the air temperature in the receiver was." Mosbaugh at 21. Intervenor then states that temperature range would be about 70F to 100F. Id.

Intervenor PF 522, this assertion is highly misleading and inconsistent with Georgia Power's testimony, Intervenor's testimony and in situ data. In the March-April 1990 time frame, because of the ambient conditions during that time of the year, the more logical inference from Intervenor's own testimony as well as the testimony of Dr. Hill and Mr. Ward, is that diesel room temperatures were in the 60F to 85F range and, thus, the air receiver temperatures were in that same range as well. With internal temperatures in this range, if the high dew points measured on March 29 through April 7 were indeed actual dew point conditions (see Int. Exh. II-169 for the dew point readings), a significant amount of moisture should have been accumulating in the air receivers and observed during receiver blowdowns and the April 6 receiver inspection. See Tr. 10432-34 (Mosbaugh). Of course, this was not the case.

Furthermore, Intervenor footnote 122 misrepresents the testimony of Dr. Hill. While Dr. Hill agreed that the temperature in the trench would "approximate" the foundation temperature, which he guessed to be "on the order of 55 to 60 degrees Fahrenheit," he also agreed that there is a "massive amount of concrete" comprising the diesel building foundation. Tr. 14383-84. Further, Dr. Hill explained that the trench has a steel checker plate cover over it. Id. Of course, there will be a temperature gradient across the diesel building concrete foundation slab ranging from ground temperature at the bottom of the slab to ambient room temperature at the top of the slab. The trench piping, being in the diesel building and on top of the concrete slab, will be closer to the ambient room temperature than the ground temperature.

Moreover, should water form in the trench piping, it would move through the air system piping and eventually be trapped in the control air filter bowl. See GPC PF 612-615. No water

was found in the control air filter bowl, where it would be found if water was affecting the control system at all. See GPC PF 603-09.

It is certainly telling that Intervenor's findings completely abandon his earlier claim in his pre-filed testimony, namely that "hundreds [or] perhaps a thousand or more feet of small stainless steel tubing in the diesel pneumatic control air system" would be chilled below the 50F by "blasts" of cold air drawn into the diesel building by the ventilation system. Mosbaugh at 21-22. Obviously, this is another in a series of failed attempts by Intervenor to substantiate his position that water formed in the diesel air system. See GPC PF 592-618.

iii. "Bockhold Submitted False Testimony Before the ASLB Concerning the Basis of His April 6 Assertion to IIT That VP-2466 Was Apparently Defective" (Int. PF 551-554)

Intervenor PF 551 and 552 conveniently omit the fact that Mr. Bockhold corrected his testimony during the same cross-examination exchange cited by Intervenor. Mr. Bockhold admitted that initially he mistakenly thought he must have had a copy of GPC Exh. II-52 during the April 6 IIT conference call because of the date on the top of the document. Tr. 6535-36 (Bockhold).

Intervenor PF 554 implies that Mr. Bockhold's memory lapse regarding the exact timing of when he received GPC Exh. II-52 demonstrates deliberate misconduct. Such a conclusion is ridiculous. See NRC PF 284-285.

D. "Failing to Advise NRC about VP-1114 Readings" (Int. PF 555-575)

Intervenor PF 555-575 asserts that Georgia Power "concealed every high, out-of-specification VP-1114 [EG&G Model 911 dew point] readings (sic) from the NRC." Intervenor

PF 556. Georgia Power assumes Intervenor's unbounded assertion refers to the specific readings that were taken on the evening of April 6 and on April 7 (Intervenor PF 555),^{28/} and that the alleged acts of concealment occurred on the April 9 IIT conference call and the April 11 dew point list given to the NRC by Georgia Power (Intervenor PF 556).

Not surprisingly, Intervenor omits from his discussion the fact that Georgia Power shared the out-of-specification dew point readings with NRC inspector Mr. Hunt on April 7 (see GPC Reply to Int. PF 545, at 226 supra; NRC PF 286), and shared general dew point information with the NRC on April 9, 1990 on an IIT conference call (GPC Exh. II-61) and at the meeting in NRC Region II's offices in Atlanta, Georgia (see GPC Reply to Int. PF 546, at 225-27 supra; NRC PF 293).

i. "April 9 IIT Conference Call" (Int. PF 557-565)

Intervenor PF 557 makes a conclusory assertion that Georgia Power "failed to adequately advise NRC of readings taken with VP-1114." Intervenor's argument, however, has no foundation because Intervenor did not bother to establish the necessary predicates for his conclusion, namely (1) that the NRC was not already aware of the VP-1114 readings and (2) that it was appropriate for Georgia Power to provide that information on the April 9 conference call.

Regarding the first predicate, a careful reading of the IIT conference call transcript (GPC Exh. II-61) reveals that Mr. Chaffee received a telephone conference update on Saturday, April 7

^{28/} Intervenor could not literally mean all high readings obtained with VP-1114 were concealed from the NRC because the April 8, 1990 high reading EDG 2A was obtained with VP-1114 and it is uncontroverted, even by Intervenor, that Georgia Power shared this information with the IIT. Intervenor PF 562 (footnote 125). Thus, Georgia Power assumes that the concealed high readings to which Intervenor refers are those reflected on Int. Exh. II-169 as being taken with VP-1114 on April 6 (one reading on EDG 1A receiver K01) and April 7 (two readings on each of the eight air receivers).

regarding dew point test results which was not transcribed.^{99/} During the April 9 conference call, Messrs. Chaffee and Ward refer to a conference call conducted on Saturday morning, April 7, on the results of the diesel test on jacket water temperature (IIT Document No. 205). GPC Exh. II-61 at 3. Mr. Chaffee then states:

The thing that was hanging, I guess, was the air- quality issue. What I heard later that day [i.e., Saturday] was that you had gotten a new instrument, but when you did testing with it, you got negative numbers, which didn't make any sense. So, you were going to go get another instrument for measuring the air quality from Hatch, and I don't know -- have you gotten that instrument and used it, or are you still waiting for it?

GPC II-61 at p. 4-5. This exchange strongly suggests that Mr. Chaffee was updated on dew point measurements taken on April 6 and 7 on Saturday, April 7 because he knew about the GE rental Alnor readings taken on April 7. In addition, Mr. Ward explained that Georgia Power borrowed an instrument from V.C. Summer, not Hatch, and it was identical to one of the instruments Georgia Power already had, i.e., the VP-1114. *Id.* at 4. The fact that no specific reference was made to the VP-1114 readings on the April 9 conference call is not a reasonable basis on which to conclude that Mr. Chaffee was not informed of those readings on April 7.

Regarding the second predicate, the April 9 conference call transcript shows that Georgia Power engaged in open, candid discussion with the NRC regarding air quality, as well as other topics, and reasonably provided information of interest to the NRC based on what was known by the participants at the time. GPC Exh. II-61.

^{99/} Mr. Hunt was also apparently informed of all the high dew point readings on April 7 as well. *See* GPC Reply to Int. PF 545, *supra*.

Intervenor PF 561 misrepresents the testimony of Mr. Ward, asserting that "Mr. Ward knew of the high VP-1114 readings and had obtained a briefing by Mr. Bockhold about them over the weekend." Intervenor's supporting citations, however, reveal that Mr. Ward did not know that Georgia Power already had its own EG&G instrument on site and that it had given high readings when he participated on the April 9 conference call. Tr. 7916-17, 7863 (Ward). Moreover, while Mr. Ward's notes reflect that he was briefed over the weekend about plant personnel using a back up instrument "wrong," they do not reflect that he was informed about high EG&G readings as asserted by Intervenor. GPC Exh. II-60 (92 Project 047996-048001).

Intervenor PF 562 also misrepresents the testimony of Mr. Ward. Contrary to Intervenor's assertion, Mr. Ward did not say that "all eight air receivers" had dew points in the 36F to 45F range. Rather, Mr. Ward stated "all the numbers that were reported Sunday were in the range of 36 to 45 degrees." GPC Exh. II-61 at 5. Mr. Ward's statement is obviously consistent with the information he was provided on Sunday, April 8. His notes taken on April 8 show only Unit 1 air receiver data that ranges from 36 to 45 degrees. GPC Exh. II-60 (92 Project 048000). Mr. Kitchens then appropriately advised the April 9 conference call participants of the additional information he possessed, that all eight Vogtle receivers were in-specification except for the Unit 2A K02 receiver. GPC Exh. II-61 at 4. Intervenor's assertion that Mr. Ward's statement was false because it omitted the Unit 2A K02 high dew point reading demonstrates the low threshold Intervenor has for, and the degree of care Intervenor exercises in, making accusations of false statements.

Intervenor PF 563 mischaracterizes a portion of the April 9 conference call. A more accurate summary is provided in GPC PF 514-516 and NRC PF 257.

Intervenor footnote 127 expresses "mystification" regarding Mr. Kitchens statement on the April 9 conference call that he did not believe the March 29 high dew point readings reflected an actual condition but were the result of an instrument error (GPC Exh. II-61 at Tr. 7-8), because Mr. Kitchens testified that he may not have been aware of the VP-1114 readings taken on April 7. Intervenor's bewilderment is easily resolved by the facts. Mr. Kitchens testified that the basis for his statement was the report he received from I&C personnel that the instrument was faulty (Tr. 13707) and that he had reviewed data for the past year which indicated the air receivers had generally passed their dew point checks (Tr. 13716).

Intervenor PF 565 misrepresents the evidence by summarily concluding that Georgia Power did not advise the NRC about the high VP-1114 dew point readings taken on April 6 and 7 and asserting that the amorphous "record as a whole" supports a finding of intentional material omission of information. The evidence contradicts these assertions. See § VIII.D, supra.

ii. "Excluding VP-1114 Measurements From Dew Point Data Transmitted to NRC On April 11, 1990" (Int. PF 566-71)

Intervenor PF 566 mischaracterizes a portion of the April 9 conference call. A more accurate summary is provided in GPC PF 514-516 and NRC PF 257.

Intervenor PF 568 incorrectly asserts that every high dew point reading taken with VP-2466¹⁰⁰ is omitted from the April 11 list. The dew point readings recorded for March 9 and March 31 are out-of-specification high readings taken with VP-2466 that were obviously included on the list. GPC Exh. II-57. This is apparent from Intervenor's own Demonstration Aid 4 (Int. Exh. II-169), and the basis for the contrary assertion is hard to understand.

Intervenor PF 569 refers to Intervenor Demonstrative Aid 13. We assume that Intervenor intended to refer to Demonstrative Aid 13B, which was admitted as Int. Exh. II-240. Tr. 13813-14. The proposed finding is grossly misleading because it fails to mention that of the 22 high dew point readings that were not included on the April 11 list, 19 were taken in the April 5-7 time frame when Georgia Power did not believe the dew point readings reflected actual high dew point conditions and the remaining three predated the time period which Mr. Kitchen informed the NRC the dew point list would cover. See GPC PF 518-520; NRC PF 262, 264-65.

Intervenor footnote 128 inaccurately summarizes information from Int. Exh. II-169. Intervenor's reference to indeterminate or out-of-specification readings for EDG 1A receiver K02 should have been January 20, 1989 to July 7, 1989. Int. Exh. II-169 at 1; See also Int. Exh. II-35 at 1-2 indicating that the first dew point measurement performed under MWO 1-88-09080 was taken on January 20, 1989.

Intervenor PF 570 misleads the Board because it inaccurately summarizes Mr. Kitchens' testimony. Mr. Kitchens did not know whether the "feed and bleed" process had been performed

¹⁰⁰ We note that Intervenor PF 568 states VP-2446. We assume this is a typographical error and VP-2466 was intended.

on any of the receivers other than the EDG 2A K02 receiver. Tr. 13726-27 (Kitchens). Mr. Kitchens testified that the feed and bleed process would lower the dew points of the receivers. Thus, without knowing whether that process was employed he could not tell from the final readings alone whether the initial readings were valid. Tr. 13727-28 (Kitchens).

Intervenor PF 571 misrepresents the evidence by summarily concluding that Georgia Power willfully omitted 22 dew point readings on its April 11 dew point list. The evidence contradicts this assertion. See GPC Reply to Int. PF 566-570, supra.

iii. "August 8, 1994 Interrogatory Response" (Int. PF 572-573)

Intervenor PF 572-573 assert that Georgia Power's August 8, 1994 interrogatory response regarding faulty dew point equipment was another attempt by Georgia Power "to exclude VP-1114 as providing defective dew point readings." Intervenor first misrepresents to the Board the interrogatory question and then makes the above assertion, which defies all logic.

Intervenor PF 572 provides only part of the interrogatory. The interrogatory begins by quoting from Georgia Power's April 9, 1990 letter to the NRC as follows, "initial reports of higher than expected dew points were later attributed to faulty instrumentation." With respect to this statement respond to the following:" Intervenor PF 572 correctly restates the remainder of the interrogatory (i.e., identify the faulty instrumentation to which this statement refers). See Int. Exh. II-36 at 35.

Intervenor PF 573 asserts that Georgia Power failed to list VP-1114 as "believed responsible for providing higher than expected dew point readings." Intervenor of course never mentions

the first part of the interrogatory and selectively drops the operative language from the portion of the interrogatory he did quote in Intervenor PF 572. With regard to the first part of the interrogatory, Mr. Bockhold testified, and a contemporaneous tape recording clearly indicates, that Mr. Bockhold intended for the "initial reports" to refer to the March 29 EDG 1A high readings. Bockhold Supp. at 5; GPC Exh. II-55A at 2. Intervenor does not contest that "initial reports" referred to the March 29 readings. Mosbaugh at 73; Tr. 8779-80 (Mosbaugh). The only instrument used on March 29 to take dew point readings was VP-2466. With regard to the portion of the interrogatory quoted by Intervenor PF 572, the operative language of the interrogatory was to identify the "faulty equipment." Georgia Power has never maintained that the "faulty instrumentation" language in the April 9 letter referred to VP-1114. Rather, Georgia Power had trouble using VP-1114 on April 5-7 because the I&C technicians taking the measurements were unfamiliar with it, could not find the instruction manual, and tried to use it without the necessary flow meter. GPC PF 500-502; see Briney Rebuttal at 6-9; see also Int. Exh. II-79 at 6-8.

iv. "NRC Witnesses Testimony and IIT Documents Indicate That VP-1114 Measurements Were Never Provided to NRC" (Int. PF 574-575)

Intervenor PF 574 attempts to mislead the Board with crafty wording regarding specific NRC knowledge of the VP-1114 high readings. While Mr. Hunt did say that he did not recall seeing GPC Exh. II-52 while at the Vogtle site on April 7 (Tr. 4932-33), he also said (1) that he recalled seeing a document similar to it (Hunt Aff. at 5), (2) that Mr. Bockhold informed him of high readings where Georgia Power suspected the instrumentation rather than the condition of the receiver (Tr. 4924-25), and (3) most importantly, that he recalled Georgia Power trying "to use both the Alnor and the other equipment. And it seemed nobody could get a decent reading." Tr.

4925 (Hunt). See also NRC PF 242-243. Further, notes taken at the April 9, 1990 meeting by the Vogtle Licensing Manager, Mr. James Bailey, indicate that Georgia Power informed the NRC that Georgia Power had used a "bad" dew point instrument, but obtained another instrument from the V.C. Summer plant and learned how to use Georgia Power's "back-up" instrument. See Int. Exh. II-70 at 4-5. Intervenor conceded that Mr. Bailey's April 9, 1990 notes (id.) indicate that Mr. Bockhold told the NRC on April 9 that site personnel had been using the "back-up" instrument, VP-1114, incorrectly when it gave high readings on April 5-7. Tr. 8784-86 (Mosbaugh).

Based on the foregoing, there is no credible evidence to support Intervenor's allegation that Georgia Power committed a willful material false statement by omission regarding the VP-1114 readings.

IX. "April 9 Letter Air Quality Statements" (Int. PF 576-577)

A. "Falsely Attributing High Dew Point Readings to a Defective Instrument" (Int. PF 578-580)

Intervenor PF 578-580 create a false premise and then attack it in the proposed findings that follow. Intervenor's basic proposition, that Georgia Power's only basis for believing that VP-2466 was defective was the set of simultaneous high readings on all eight air receivers, is obviously not true. The April 9 letter itself provided additional bases for Georgia Power's belief that VP-2466 was faulty, namely an air receiver inspection, control air filter inspections and daily receiver blowdowns. See GPC Exh. II-13 at 3. Further, testimony adduced at the hearing revealed additional bases for this conclusion. GPC PF 490-502, 511-513, 521-524.

Intervenor PF 579 also misrepresents the evidence it purports to summarize. First, Intervenor again misrepresents to the Board an interrogatory which Georgia Power's August 8, 1994 response addressed. See GPC Reply to Int. PF 572, supra. Intervenor's interrogatory 3.c. did not ask for Georgia Power's basis for believing VP-2466 was faulty but rather asked with regard to Georgia Power's April 9 letter, what documents were relied upon to conclude that the instrumentation associated with the "initial reports of higher than expected dew points" was faulty. See Int. Exh. II-36 at 35-36. Intervenor PF 579 remarkably leaves out this information. Thus, Intervenor's summary of Georgia Power's reply to interrogatory is also misleading. Obviously, Georgia Power presented extensive testimony regarding additional bases for believing VP-2466 was faulty. See GPC PF 490-502, 511-513, 521-524. Mr. Briney did not participate in responding to interrogatory 3.c. (see Int. Exh. II-36 at 4-5) and Mr. Bockhold testified that he relied on Mr. Briney's judgment that VP-2466 was defective. Bockhold Supp. at 3 (as corrected at Tr. 6394). Mr. Briney supported this testimony. See GPC PF 501.

Second, Intervenor PF 579 also misrepresents the testimony of Mr. Hammond. Intervenor makes several assertions regarding Mr. Hammond's testimony. A review of the relevant portion of the record cited by Intervenor for support indicates Mr. Hammond testified that he does not remember if there was ever a conclusion that VP-2466 was defective. Tr. 12786 (Hammond).

- i. **"Mr. Hunt Testified That The Air Dryers Were Turned Off and, As Such, Valid High Readings on All Eight Receivers Was A Logical Consequence" (Int. PF 581)**

Intervenor PF 581 asserts that the record supports a finding that all eight air dryers had been turned off, which caused the simultaneous high readings on all eight air receivers on April 6

and 7. However, Intervenor's support for this proposition is anything but clear. Intervenor relies on the testimony of Mr. Hunt, but reads into that testimony much more than Mr. Hunt actually said. Mr. Hunt certainly does not say, as Intervenor represents, that Vogtle personnel told him "that they only needed to run the dryers during when ambient humidity was extremely high."¹⁰¹ Int. PF 581. Admittedly, Mr. Hunt's testimony on this point is difficult to follow. About the only thing that is clear is Mr. Hunt does not have a strong recollection regarding what he was told about dryers being out of service and it is possible he has confused another plant's practice with Vogtle's practice. Even if one assumes that Mr. Hunt intended to state what Intervenor represents as Mr. Hunt's testimony, such testimony does not square with Mr. Stokes' description of the diesel air system operation nor the testimony of other witnesses. Mr. Stokes testified that the dryers run continuously. Tr. 7722 (Stokes); see also Board Exh. II-3 at 9.5.6-4 ("the air dryer is designed to run continuously"). Messrs. OwYoung and Johnston both testified that they were not aware of any practice at Vogtle to run the dryers only when humidity was extremely high. Tr. 12634 (OwYoung and Johnston). The I&C technicians stated that the dryers should be on (Tr. 12879 (Hammond)), that they check to ensure the dryers are operating when they take dew point readings (Tr. 12882 (Aquinde); 12905-06 (Hammond, Aquinde, Thames)) and that the dryers have always been on when they have checked the dew point (Tr. 12880 (Thames)). Also, Mr. Briney testified that the instruction to start the fan motor on the preventive maintenance checklist for the air dryers (see e.g., GPC Exh. II-155 (Checklist SCL00166 at 92 Project 065727)) was designed to ensure the dryers were left on following their monthly preventative maintenance. Tr. 12198-99 (Briney).

¹⁰¹ Intervenor reproduces Mr. Hunt's testimony on this topic in footnote 131.

For some unexplained reason, Intervenor also cites Mr. Hunt's testimony regarding his air receiver internal inspection on April 6 for the same proposition, i.e., that it supports an inference that all dryers were turned off. Tr. 4962 (Hunt). However, the portion of the air system associated with the one dryer obviously had to be shut down in order to facilitate the receiver inspection. Moreover, Intervenor completely ignores the testimony of Mr. Stokes, the diesel system engineer, rejecting this theory (Tr. 7271) as well as the testimony of the three I&C technicians that they routinely check to see if the dryer is on when they obtain high dew point readings (Tr. 12905-06).

ii. **"Readings Taken Between March 29 and April 9 Demonstrate that VP-2466 and VP-1114 Were Providing Accurate Dew Point Readings"**

(a) **"1B [sic] Dew Point Readings Taken On April 2" (Int. PF 582)**

Intervenor PF 582 asserts that since the Alnor, VP-2466, instrument was capable of providing in-specification readings on April 2, 1990 on the EDG 2B air receivers, then VP-2466 could not have been defective on March 29, 1990. While Georgia Power admitted that it cannot explain these results, neither can Intervenor explain why, if as he asserts VP-2466 was not defective, the EDG 2B receivers suddenly had their dew points rise more than 30F to out-of-specification levels on April 7. See GPC PF 553-554.

(b) **"Instrument Air Readings Taken On April 6" (Int. PF 583)**

Intervenor PF 583 fails to mention that when Mr. Bockhold explained to the IIT, on the April 6, 1990 conference call, that the VP-2466 appeared to provide accurate readings on the turbine building instrument air system but did not provide accurate readings on the diesel air system, he also provided a possible explanation, namely that the fault in the instrument was possibly a

function of the temperature and pressure of the system being measured. See GPC PF 478 (including footnote 100).

(c) "Valid High Readings on Both Unit 2A Diesel Air Receivers Resulting from Dryers Being Out of Service" (Int. PF 584-586)

Intervenor PF 584 misrepresents the record. Intervenor asserts that both dryers associated with the EDG 2A had been turned off. Intervenor cites a partial transcript of Tape 41 (GPC Exh. II-55A at 10) as support. The relevant portion of the exhibit indicates Mr. Stokes said "[t]hey had left the dryers off, I think following the PM, both dryers off." Id. Mr. Stokes testified that he believes he was speculating about both dryers being turned off, and that he did not know for certain that was in fact the case. Tr. 7271 (Stokes). Instead of referring to Mr. Stokes' testimony regarding the Tape 41 transcript, Intervenor refers to Mr. Kitchens' interpretation of the tape transcript even though he was not a participant to the conversation and had never reviewed the tape transcript before. Tr. 13686 (Kitchens). Further, Mr. Kitchens' understanding was that only the EDG 2A K02 dryer had been found turned off when he participated on the April 9, 1990 IIT conference call. GPC Exh. II-61 at Tr. 5.

Intervenor PF 585 misrepresents the record. The 60.9F dew point reading on EDG 2A K02 referred to by Intervenor was taken on April 8, not April 9, 1990 as stated by Intervenor. See Int. Exh. 169 at 5; see also Int. Exh. II-146 (MWO 29000964 Block 27 continuation sheet 1). Intervenor makes the false assertion that "feed and bleed" was initiated prior to this 60.9F reading (on April 8) but offers no evidence for this assertion. In fact, the evidence indicates that the "feed and bleed" process was not initiated for the EDG 2A K02 receiver until well after the reading was taken. Int. Exh. II-217 at 7 (92 Project 010827).

Intervenor PF 586 does not provide, as it asserts, a reasonable basis for concluding that VP-2466 and VP-1114 were functioning properly. See GPC PF 554-560.

(d) "Valid High Readings Resulting from Opening of the 1A Air Receiver on April 6" (Int. PF 587-589)

Intervenor PF 587 offers no citation to the record for the proposition that once an air receiver is opened to the atmosphere, multiple "bleed and feed" cycles are required before in-specification readings can be obtained. While this may be true in certain conditions, it is not necessarily true for all conditions. Moreover, Intervenor implies that "bleed and feed" cycling was required for a three day period before the EDG 1A dew points were lowered. However, there is no evidence in the record that this was in fact the case. It is just as likely that Operations personnel (who perform the feed and bleed cycling (see Tr. 12179, 12192 (Briney))) cycled the receivers on one day, rather than over three days, and I&C personnel (who take the dew point readings (see GPC PF 472)) measured dew points on another day. From a technical standpoint, the dryers have enough capacity to completely recharge an air receiver in approximately half an hour. Tr. 10228 (Mosbaugh).

Intervenor PF 588-589 are misleading because they are premised on the unsupported assertion made in Intervenor PF 587 that it normally takes three days for dew points to come within the specified range after a receiver is depressurized. Moreover, these proposed findings should be ignored by the Board because Intervenor's assertion that the dew point readings on the EDG 1A KO2 receiver on April 7 were in a range to be expected is premised on evidence that is not in the record, namely Local Climatological Data for Augusta, Georgia. Intervenor has not moved the Board to reopen the record to admit this data into evidence and, therefore, Intervenor is

foreclosed from using it as evidence. There is no affidavit supporting either the authenticity of the data or the applicability of the data to the Plant Vogtle diesel buildings.

iii. "The EG&G Model 911 Dew Point Instrument (VP-1114) Confirmed that the Alnor (VP-2466) Readings Were Accurate" (Int. PF 590)

Intervenor PF 590 sets up the argument to follow, which in summary is that Intervenor disagrees with the technical rationale followed by Georgia Power in determining that measurements taken with the EG&G dew point instrument, VP-1114, on April 5-7, 1990 were not reliable. Obviously such argument, even if assumed to be correct, is insufficient for Intervenor to prevail in this proceeding. To prevail, Intervenor must demonstrate the Georgia Power officials were recklessly careless with the facts. Memorandum and Order (Summary Disposition: Air Quality) (April 27, 1995) at 6. Intervenor PF 591-596 do not even allege, let alone demonstrate, that Georgia Power was recklessly careless in assessing the facts that led to the determination that the April 5-7 readings on VP-1114 were unreliable. Thus, Intervenor does not even attempt to rebut Mr. Briney's testimony that, among other things, the absence of a flow meter on the April 5-7 VP-1114 readings caused him to doubt their reliability. Briney Rebuttal at 8-9.

(a) "Absence of a Flow Meter" (Int. PF 591-593)

Intervenor PF 591-593 misleads the Board by failing to address all of the relevant testimony regarding the possible effects on dew point readings when a flow meter is not used with the VP-1114. NRC Staff witness Mr. Skinner testified that based on his conversation with EG&G representatives that "it would ... be possible, but highly improbable that you could ... get a valid reading without the use of a flow meter." Tr. 14644 (Skinner). Contrary to Intervenor PF 592, Mr. Skinner also testified that if flow were less than 0.5 scfh, then VP-1114 would give unreliable

high readings. Tr. 14644-45, 14751-52 (Skinner). Mr. Skinner also testified that the EG&G representative stated that it takes experience to use the EG&G instrument correctly without a flow meter. Tr. 14752 (Skinner). In addition, Intervenor's technical analysis does not consider other possible causes for the high VP-1114 readings. See GPC PF 550-552.

(b) "Capability of the Technicians" (Int. PF 594-596)

Intervenor PF 594 also misleads the Board by failing to address all of the relevant testimony. Both Mr. Hammond and Mr. Briney testified that the I&C technicians using the EG&G (VP-1114) in the April 5-7 period had never used the instrument before and that the vendor manual could not be located. Briney Rebuttal at 6-9; Tr. 12083 (Briney), Tr. 12784 (Hammond).

Intervenor PF 594 misrepresents Georgia Power's position regarding unreliable VP-1114 readings. See GPC PF 490-496.

Intervenor PF 596 creates the inaccurate perception that multiple technicians took the high dew point readings that are reflected on GPC Exh. II-52. However, the same technician took the measurements on all eight air receivers using the three different instruments. See GPC PF 490.

iv. "Failure to Consider and Investigate Common Cause Factors" (Int. PF 597)

Intervenor PF 597 mischaracterizes Georgia Power's rationale for believing that the VP-2466 and VP-1114 were not providing accurate dew point readings. See GPC PF 490-502. The proposed finding also misrepresents the record. Mr. Kitchens recalled that a review of past maintenance work orders was performed to see if dryers were being inadvertently turned off on a recurring basis and the conclusion reached was that they were not. Tr. 13681-82 (Kitchens). It is

not clear how Intervenor's citation to Mr. Stokes' testimony supports Intervenor's proposition. The Stokes testimony cited reflects only that the diesel air system operates automatically (i.e., the dryer runs continuously) (Tr. 7722), the compressor automatically cycles on and off based on the receiver pressure (Tr. 7721), and the plant equipment operators would turn the air system equipment off and on when needed (Tr. 7718). The citations to Mr. Bockhold's testimony offer no support for Intervenor's proposition and the citations to Mr. Briney's testimony actually conflict with Intervenor's position.¹⁰² Intervenor completely disregards testimony from the three I&C technicians (Messrs. Hammond and Aquinde and Ms. Thames) that they routinely check to see if the air dryer is operating when they obtain high dew point readings, and that if the dryer is on they would likely not indicate that on the MWO. Tr. 12905-06. Finally, Intervenor's footnote 137 makes an argument based on the Event Review Team Report regarding the EDG 2A start failure on July 11, 1990 caused by sticking air start valves. That event, of course, has no relevance to this matter. See GPC PF 626-46 for a description of the sticking air start valves issue.

v. "Failure to Initiate M&TE Program Requirements" (Int. PF 598-599)

Intervenor PF 598 contains two minor factual errors. First, the dew point test equipment itself is not literally "required to be traceable to the National Bureau of Standards." Rather, the dew point instruments are required to have their calibration periodically checked by a reference standard whose accuracy is traceable to the National Institute of Standards and Technology (formerly the National Bureau of Standards). See e.g., GPC Exh. II-201 (Exh. A, p. 2 of 2). Second, the Vogtle program created to ensure appropriately calibrated instruments are used is called the

¹⁰² Mr. Briney stated that they did not troubleshoot the dryers during the April 5-7 time frame because, among other reasons, they did not want to take the dryers out of service. Tr. 12188-89 (Briney).

Measuring and Test Equipment ("M&TE") program, not maintenance and test equipment program. Int. Exh. II-36 at 6.

(a) "Failure to Obtain 'As Found' Data" (Int. PF 600-604)

Intervenor PF 600-604 mix facts with negative inferences to conclude that the absence of "as found" data on VP-2466 following its last use at Vogtle on April 7, 1990 constitutes "intentional willful conduct aimed at concealing the fact that VP-2466 and VP-1114 were providing valid, high dew point readings" Int. PF 604. Georgia Power's summary of the handling of VP-2466 under the Vogtle M&TE program offers a reasonable and balanced view of the evidence. See GPC PF 521-525.

Intervenor PF 601 is particularly unbalanced and filled with pejorative inferences. Intervenor asserts that "the only recalibration effort Georgia Power admits to occurred in May of 1991 after VP-2466 was subjected to repair." This implies that there was some other calibration performed, which of course is totally unfounded. See GPC II-201.

Intervenor next asserts that "no 'as found' data was obtained in violation of the M&TE program and no investigation as to why no 'as found' data was obtained was initiated." Int. PF 601. The first part of this assertion is false. Georgia Power requested that the calibration service vendor provide "as found" data when they shipped VP-2466 for calibration. See GPC Exh. II-201 (Exh. B, p. 1 of 5). However, the vendor determined that no "as found" data could be obtained because the instrument was in a state of disrepair. Id. (Duncan Aff. at ¶¶ 4 and 5). The M&TE program obviously cannot require "as found" data, as asserted by Intervenor, if the instrument is in disrepair. See Tr. 14643 (Skinner). The second part of the assertion, regarding an

investigation of the prior VP-2466 readings, is accurate. However, Mr. Duncan explained that the reason no investigation was completed when the Alnor calibration certificates were forwarded to Vogtle was that the calibration history sheet was erroneously checked as "accept." Thus, no investigation was triggered. GPC PF 525.

Finally, Intervenor proposes what he terms the "only plausible explanation" regarding why no "as found" data was taken.^{102/} However, the vendor's documentation simply indicates that the instrument was repaired before any data was taken, not, as Intervenor infers, that the instrument was repaired before data could be taken. GPC Exh. II-201 (Exh. B, pp. 2 and 3 of 5). The more reasonable inference, as Mr. Skinner testified, is that the vendor saw no value in taking data when the instrument was received in a state of disrepair. Tr. 14643 (Skinner).

Intervenor PF 602 asserts, without citation to the record, that the test technicians who took the readings and the foreman responsible for taking the readings had no knowledge that VP-2466 was suspected of being defective. However, the record reflects that only Mr. Hammond was asked this question and he responded that he simply did not remember. Tr. 12787 (Hammond).

Intervenor PF 602 also misrepresents Mr. Hammond's testimony regarding the possibility for the Alnor instrument (VP-2466) to malfunction. Mr. Hammond actually testified that he had not used the Alnor very much (Tr. 12793), that he did not recall what type of malfunction might have occurred in April 1990 (*id.*), that he was not familiar with the internals of the device so he

^{102/} The adjective chosen by Intervenor appears appropriate. Intervenor's assertion is "superficially fair or reasonable."

could not say how susceptible they were to failure (Tr. 12794), and that he could not imagine how the Alnor's fog chamber might malfunction (Tr. 12795). Obviously, Intervenor failed to point the Board to the best source for this information in the record. GPC Exh. II-201 (Exh. A, p. 1 of 1) is the VP-2466 history sheet which shows that the "non accept" column was routinely checked.¹⁰⁴ This indicates that the instrument was determined to be either in disrepair when received by the vendor or that the "as found" condition of the instrument was out of calibration. This history is hardly indicative of an instrument that was "not very susceptible to malfunction." Int. PF 602.

Intervenor asserts that Mr. Briney's testimony was contradictory. Int. PF 602. However, no such contradiction exists. See GPC PF 521-523. Intervenor also misrepresents Mr. Kitchens' testimony. Int. PF 602. Mr. Kitchens simply indicated that he was not aware whether the M&TE program concluded VP-2466 was defective (Tr. 13708-09) and does not know why VP-2466 was not sent off-site for a calibration check (Tr. 13736). Of course, the record was developed further, subsequent to Mr. Kitchens' testimony, to show VP-2466 was sent to the vendor for calibration. GPC Exh. II-201.

Intervenor PF 603-604 draw pejorative conclusions regarding Georgia Power management based on conjecture alone. Nothing in the record indicates Georgia Power deliberately chose not to follow M&TE program procedures. Georgia Power did attempt to ascertain the "as found" condition of VP-2466, albeit later than normally done, but the condition of the instrument prevented the vendor from providing this information. Intervenor presupposes that Mr. Ward, as

¹⁰⁴ As GPC Exh. II-201 (Duncan Aff. at ¶ 6) indicates, even the last entry on the history sheet should have been checked "non accept."

a "corporate manager" had an affirmative duty to track the VP-2466 instrument through each step of the M&TE program. He cites no evidence in support of this supposition because there is none.

vi. "Failure to Process A March 29, 1990 Deficiency Card" (Int. PF 605-606)

Intervenor PF 605-606 are conclusory argument and conjecture and are not supported by the record. There is no evidence to suggest that control room personnel "rejected" the deficiency card written by I&C technicians for the March 29 high dew point readings.^{105/} The evidence adduced at the hearing demonstrates that the Shift Supervisor's suggestion to the I&C technicians that a corrective MWO was the appropriate means for addressing the high dew point readings was correct. See GPC PF 473; see also NRC PF 223.

Intervenor PF 606 leaps to the far-fetched conclusion that because Operations Department personnel advised against a deficiency card on March 29 (which was in accordance with the Deficiency Control procedure (Board Exh. II-6)) but allowed a deficiency card on April 6 (which is permissible under the procedure) that there was a grand conspiracy to conceal high dew point readings from the NRC that reached down to control room personnel and I&C technicians. This is silly.

vii. "Failure to Adequately Investigate the Deficiency Card Issued In Response to High Dew Point Readings" (Int. PF 607-611)

Intervenor PF 607-611 find fault with Georgia Power's handling of a Deficiency Card 1-90-186, which was initiated on April 6, 1990. Int. Exh. II-79 at 6-8. However, Intervenor's

^{105/} GPC Exh. II-155 is the work order documenting the March 29 high dew point readings. The work order documents (see Block 27) the interaction between the Operations Department Shift Supervisor and the I&C technician.

Monday morning quarterbacking does not allege and certainly does not substantiate that Georgia Power's handling of the deficiency card constitutes "recklessly careless misrepresentation" to the NRC regarding dew points. Memorandum and Order (Summary Disposition: Air Quality) (April 27, 1995) at 7-8.

The deficiency card documents Mr. Briney's rationale for concluding that the Alnor dew point analyzer was defective and that was the same rationale communicated to Mr. Bockhold and ultimately to the NRC. Briney Rebuttal at 10-11; GPC PF 492, 500-502. Intervenor's position appears to be premised on a theory that Georgia Power misrepresented to the NRC the "as found" calibration status of the instrument, which of course is not true. Otherwise, Intervenor PF 607-611 have no connection to the proceeding.

Intervenor appears to be unwilling to acknowledge that people sometimes employ a decision-making process that differs from his after-the-fact decision questioning approach. It is simply the case that Mr. Briney believed he had sufficient information to reach the conclusion that the Alnor instrument was defective. Briney Rebuttal at 10; Tr. 12092 (Briney). There is no more intrigue involved.

It is not clear what Intervenor intends to assert in Intervenor PF 609. The introductory sentence is nonsensical. It appears, however, that Intervenor intended to misrepresent the record by asserting that DC 1-90-186 (Int. Exh. II-79 at 6-8) concluded VP-2466 was defective based on the GE rental Alnor readings alone. Int. PF 609. However, the deficiency card reveals more

regarding Mr. Briney's decision-making rationale.^{106/} See Tr. 12221-23 (Briney) (he did not know that the GE Rental numbers were impossibly low at the time); see also GPC PF 492, 500-502.

viii. "Failure to Comply with 'Lessons Learned' from TMI" (Int. PF 612)

Intervenor PF 612 asserts that Georgia Power, by questioning the validity of the high dew point readings on April 5-7, somehow failed to adequately learn from the TMI accident. Intervenor does not even attempt to relate this assertion to the admitted bases in the proceeding. See Georgia Power's Reply to Intervenor PF 555-575 regarding the assertion that Georgia Power hid the VP-1114 readings from the NRC.

ix. "Failure of the Critique Team to Analyze Air Quality" (Int. PF 613-617)

Intervenor PF 613-617 fault the Event Review Team report on the March 20, 1990 Site Area Emergency for being "silent on all matters pertaining to [diesel] air quality." Int. PF 615. However, Intervenor's after-the-fact disparagement of the Event Review Team report does not carry his burden of showing that Georgia Power's handling of the diesel air quality issue constitutes "recklessly careless misrepresentation" to the NRC regarding dew points. See Memorandum and Order (Summary Disposition: Air Quality) (April 27, 1995) at 7-8.

x. "Failure to Compare VP-2466 With Instruments Georgia Power Believed to Be Providing Accurate Readings" (Int. PF 618)

Intervenor PF 618 is another example of Intervenor's Monday morning quarterbacking. Intervenor asserts that Georgia Power was unwilling to take comparative readings with VP-2466

^{106/} Int. Exh. II-79 at 7 indicates Mr. Briney considered (1) the initial high EG&G (VP-1114) readings, (2) the borrowed Alnor Analyzer (GE Rental) readings, which he believed indicated acceptable dew points at the time, and (3) the subsequent in-specification readings with the EG&G (VP-1114), before concluding that the Alnor (VP-2466) was defective and the EG&G (VP-1114) was improperly used initially.

after determining that it had two EG&G instruments giving valid readings on April 8. Intervenor does not allege and certainly does not substantiate that Georgia Power made "recklessly careless misrepresentations" to the NRC regarding dew points. Memorandum and Order (Summary Disposition: Air Quality) (April 27, 1995) at 7-8.

B. "The April 9 Letter Provides a Deficient Basis to Conclude that Air Quality Was Satisfactory" (Int. PF 619-27)

Intervenor asserts that the April 9, 1990 letter "sets forth a deficient technical basis to conclude that air quality was satisfactory." Int. PF 619. As discussed below, the record evidence cited by Intervenor does not support his position and fails to rebut the extensive evidence cited by Georgia Power demonstrating that a reasonable basis in fact existed for the April 9 letter's air quality representation. See GPC PF 465-66, 488-89, 534-47, 605-10, 643-44. Having failed to meet his burden of production as to the alleged "deficient technical basis," Intervenor certainly has not satisfied his additional and heavier burden of establishing a prima facie case that Georgia Power knew of and carelessly disregarded the alleged deficiency.

i. "Internal Inspection of Air Receiver" (Int. PF 620-621)

Intervenor argues that the April 6, 1990 air receiver inspection, which found the receiver to be clean inside, "provided no basis to determine whether [sic] the quality of the diesel generator pneumatic air supply [was acceptable]." Int. PF 620. The testimony which Intervenor cites does not support his conclusion. Contrary to Intervenor's assertion, Mr. Handfinger never "conceded" that "the inspection performed provided no basis to determine what the air quality was prior to[,] during or after the SAE." Id. Rather, Mr. Handfinger testified that the inspection could not determine whether the air receiver's dew point had been within specification over the pertinent

period. Tr. 11362 (Handfinger). The Shipman testimony cited by Intervenor also related to dew point specifications. Tr. 10920-21 (Shipman).

Georgia Power has already demonstrated that strict adherence to the dew point acceptance criteria was not the only means for demonstrating satisfactory air quality. See GPC PF 535-47. In this regard, Mr. Shipman stated that the air receiver inspection, together with the air filter inspection and the receiver blowdowns, "would have been direct indications of whether or not moisture in the system was a problem or not." Tr. 10918-19 (Shipman). Moreover, NRC Staff experts Tomlinson and Skinner testified that "[g]iven the corrective actions taken and the absence of corrosion, the high dew point readings [reflected on Int. Ex. II-169] do not appear significant." See GPC PF 543.

Intervenor also cites testimony by Mr. Bockhold that the inspected air receiver did contain some corrosion. Int. PF 620; Tr. 6487 (Bockhold). Intervenor then goes on to assert, without any record citation, that "finding any form of corrosion inside the air receiver would only provide a basis to conclude that air quality was not acceptable." Int. PF 620. In fact, Intervenor's bald assertion is directly contradicted by evidence that the light rust spots found on the welds inside the receiver tank were normal and to be expected, and that the light oil film possibly inside the tank was not unusual or a concern. See GPC PF 488, 644; NRC PF 209-16. Though Intervenor fails to mention it, these latter conclusions are also supported by the Bockhold testimony upon which Intervenor relies. See Tr. 6485, 6487 (Bockhold). The evidence clearly shows that no significant corrosion existed in the air receiver inspected on April 6, and that the inspection results supported Georgia Power's statement in the April 9 letter that the air quality was satisfactory.

ii. "Inspection of Air Filters" (Int. PF 622-623)

In Int. PF 622-23, Intervenor argues that the air filter inspection referenced in the April 9 letter could not have supported a conclusion of satisfactory air quality because the subject of the inspection was a "centered bronze filter" which "was not designed to detect water or moisture" in the diesel air system. While Mr. Stokes did acknowledge that the air filter was better at detecting contaminants than detecting moisture, he pointed out that "we're definitely concerned about contaminants also." Tr. 7089, 7092 (Stokes). He also stated that the vendor who removes, inspects and replaces the Vogtle filter every 18 months never reported finding anything unusual during any of the filter replacements. Mr. Stokes believed that if there had been water or corrosion products in the filter, such a report would have been made. See GPC PF 465 n. 97, 605.

Further, Mr. Ward opined that "if the filter had had water in it or been filled with water, there would be some discoloration of either the filter element or the bronze part of that assembly." Tr. 14427-28 (Ward). "Even if it had all evaporated and gone away," he continued, "I think you would be able to distinguish that water had been there sometime." Tr. 14428 (Ward).

Moreover, diesel vendor expert Mr. Sheldon Owyong testified that if moisture was in the diesel control air system, he would expect it to collect in the bowl of the control air filter or would expect the filter bowl to exhibit signs of rust or corrosion. He further stated that when he inspected the control air filter at Vogtle during the March 1990 outage, he found no evidence of moisture or corrosion product. Indeed, he has never seen any evidence of water in the Vogtle filter. See GPC PF 466, 542 & n.115, 608-09. Similarly, NRC inspector Hunt testified that he inspected all the control system air filters at Vogtle and found that each one appeared to be in "like

new" condition. Upon completing these inspections, Mr. Hunt concluded that there was no air quality problem that would cause the diesels not to start. See GPC PF 489, NRC PF 211 n.54. Intervenor's proposed findings fail to address any of this testimony.

iii. "Daily Receiver Blowdowns" (Int. PF 624-625)

Intervenor attempts to minimize the April 9 letter's observation that daily air receiver blowdowns at Vogtle had yielded no significant water discharge. He attributes the absence of water discharge to the supposed fact that "during the March-April 1990 time frame, the diesel air receivers were warm to the touch, indicating an internal temperature of 90F or higher." Int. PF 624. Intervenor again does not and cannot cite evidence to substantiate his assertion because the record indicates the contrary. Messrs. Hill and Ward testified as to their personal verification that although the air receivers may warm up slightly when the compressors are running to recharge them, the air receivers quickly return to ambient room temperature because they have large metal surface areas. Hill & Ward Rebuttal at 8-9; Tr. 14318-24 (Hill & Ward). See also Board Exh. 9.

Intervenor also maintains that Mr. Bockhold failed to verify the daily receiver blowdowns before issuing the April 9 letter. Int. PF 625. This mischaracterizes and distorts Mr. Bockhold's actual testimony. Mr. Bockhold stated that Vogtle was indeed performing daily blowdowns at the time in question, and had been doing so since 1986 or 1987. Tr. 6479-80 (Bockhold). Although he did not personally go "to the round sheets" before sending the April 9 letter, Mr. Bockhold knew about the blowdowns through communications with the Vogtle diesel experts and the vendor representatives, as well as through the fact that Vogtle had clean air filters. Tr. 6481-84,

6489-90 (Bockhold); see also GPC Exh. II-55A at 2-3.^{107/} And although he had indicated at the time of the April 9 letter that Mr. Swartzwelder was "checking" on the daily blowdowns, the purpose was simply to "double-verify it." Tr. 6483-84 (Bockhold). Additionally, the NRC Staff experts testified that "GPC's practice was to perform daily blowdowns on the air receivers which would remove any accumulated moisture if present in the receivers." See GPC PF 543.

Intervenor also states that Mr. Bockhold received reports that "maybe some moisture" was detected during the daily blowdowns. Int. PF 625. This is a selective and incomplete quotation. Mr. Bockhold testified that the information he had received was that there "wasn't any -- any water. It was, you know, maybe some moisture but no -- you know, no - no glasses of water type thing." Tr. 6480 (Bockhold). This is completely consistent with the April 9 letter's representation that the blowdowns had yielded no significant water discharge. These were probably guarded, conservative characterizations of what they had heard. Ample other evidence further demonstrates the absence of any amount of moisture in the Vogtle air receiver blowdowns. See GPC PF 540, 606.

**iv. "Failure to Inspect Piping in the Trench Below the Diesel Room Floor"
(Int. PF 626-627)**

Intervenor asserts that Georgia Power could not reasonably conclude that air quality at Vogtle was satisfactory because it did not inspect the piping in "the coldest portion of the air system that ran below the diesel room floor surface in trenches covered with metal plates." Int. PF 626. For support, Intervenor cites testimony by Dr. Hill. Id. In actuality, that testimony does not

^{107/} As Mr. Stokes, the diesel engineer observed, Mr. Bockhold was involved and entered the diesel building regularly. In contrast, he never saw Mr. Mosbaugh in the diesel rooms. Tr. 7696 (Stokes).

substantiate Intervenor's contention. While Dr. Hill agreed that cold air generally would settle to the lowest areas in the diesel generator building (Tr. 14383-84 (Hill)), Dr. Hill also stated that the diesel building is thoroughly heated and well insulated and the diesel room ventilation system minimizes the possibility of any cold spots. Hill and Ward Rebuttal at 7. See also GPC's Reply to Int. PF 55, supra. As discussed above, diesel vendor expert Mr. OwYoung testified that the most appropriate means for detecting the presence of moisture in the diesel control air system is to ascertain whether water or corrosion products have collected in the control air filter bowl. No such collection has occurred in the filter bowl at Vogtle. See GPC PF 466, 542 & n. 115, 608-609.

Finally, Intervenor makes the conclusory, wholly unsupported assertion that his concerns about moisture tend to be validated by the supported "fact that water was actually found within the system" Int. PF 627. Georgia Power has already discussed at great length the absence of any credible physical evidence that moisture -- much less accumulated water -- has resided in the diesel starting or control air systems. See GPC PF 592-618.

In sum, Intervenor has failed to support his contention that no reasonable basis existed for Georgia Power's representation in the April 9, 1990 letter that the air quality at Vogtle was satisfactory.

X. "[Intervenor's] Air Quality Conclusion" (Int. PF 628-630)

Int.PF 628-30 reach the unwarranted conclusion that Georgia Power mishandled the dew point issue in the March to April 1990 period and Georgia Power's subsequent efforts to explain the bases for information provided to the NRC on diesel generator air quality in that same time period demonstrates careless disregard. Based on the balanced and reasoned findings proposed

by the NRC Staff and by Georgia Power, the Board should find that Intervenor has failed to satisfy his burden of going forward on this basis of the admitted contention, and that Georgia Power did not make recklessly careless or willful misrepresentations to the NRC regarding air quality issues.

XI. "[Intervenor's Overall] Conclusion" (Int. PF 631-32)

In its overall Conclusion, Intervenor proposes that the Licensing Board suspend the current operation of Plant Vogtle. Georgia Power respectfully submits that this would exceed the Board's jurisdiction, which is limited to determining whether the requested license transfer should be authorized.

XII. Reply to Staff Findings

In this section, Georgia Power replies to the NRC Staff's proposed findings. As stated at the beginning of this filing, Georgia Power generally agrees with the NRC Staff's findings. There are a few minor instances, however, where the Staff has misapprehended the record or some other observation is appropriate.

In its discussion of Guiding Principles, the Staff notes that it now uses the term "material false statement" to refer to situations where there is an element of intent. NRC PF at p.11. Georgia Power wishes to caution that Board that witnesses who were asked whether some inaccuracy or omission constituted a material false statement may or may not have been operating under the same understanding.

NRC PF 39 states that "Mr. Cash testified during an August 14, 1990 OI interview that he gave Mr. Bockhold 22 and 23 for DG1B and 27 for DG1A as the number of starts since March 20, 1990." This finding is in error. Mr. Cash testified to the OSI that the 18 and 19 numbers were the numbers that he came up with at the time. OI Exh. 9 (admitted at Tr. 4451) at 8. See generally, GPC PF 94-99. He also acknowledged to Mr. Mosbaugh on April 19, 1990 that he was the source of the "18 and 19" numbers." GPC Exh. II-2 at 37.

NRC PF 43 assumes that Ms. Dixon took ten minutes per page in working on the transparencies and questions whether it was possible for her to have completed typing the Cash list on Friday. There is no support for the assumption that it took Ms. Dixon ten minutes to complete each transparency page. Perhaps the Staff has estimated that it would take Ms. Dixon 10 minutes to type a full page of text based on her testimony that she types 50 words per minute, but the longest transparency has less than a hundred words (and most have far less), so that at Ms. Dixon's rate of typing, she could have completed each transparency in a couple of minutes.

NRC PF 49 and n.21 express skepticism over the credibility of Mr. Eckert's recollection essentially on two grounds -- that Mr. Eckert could remember the events of April 6 but not April 12; and that Mr. Eckert could not describe the documents on Intervenor's counsel's table. Georgia Power does not believe that either of these grounds is persuasive. Mr. Eckert remembered Mr. Cash working on his list for Mr. Bockhold on a Friday, because Mr. Eckert was also working on one of the presentation transparencies on the Friday before the presentation and did not work on that weekend. Tr. 12965, 13018 (Eckert). Therefore, it is the day of the week, and not the date, that sticks in Mr. Eckert's mind. The fact that he could not recall what he did on some other

date without a reference point is not probative. In addition, while Mr. Eckert was unable to describe the documents on Intervenor's desk, there was no indication during the proceeding that Mr. Eckert made any attempt to look at these documents. Georgia Power assumes that Mr. Eckert's attention was focused on the questions he was being asked and on the Licensing Board whom he was addressing, and that Mr. Eckert made no effort to read Intervenor's counsel's notes and other documents (an activity that would be admittedly improper). Accordingly, Georgia Power does not believe that Mr. Eckert's inability to describe Intervenor's counsel's documents is probative.

NRC PF 66 states that on "April 11, Mr. Mosbaugh informed Mr. Kochery that the DG start count and the statement without problems and failures may be inaccurate." This overstates Mr. Mosbaugh's remarks somewhat. Mr. Mosbaugh also told Mr. Kochery that the diesel start statement might be correct. GPC Exh. II-108 at 22.

NRC PF 77 states that Messrs. Mosbaugh and Aufdenkampe informed Mr. Stringfellow that the "greater than 20" statement was basically a false statement. For completeness, the proposed finding should state that Mr. Aufdenkampe told Mr. Stringfellow "[w]e think that's basically a material false statement." GPC Exh. II-1 at 45. Mr. Aufdenkampe also told Mr. Stringfellow that he was still trying to verify the statement (*id.*), which indicates that his opinion was still tentative.

NRC PF 87 states that the phrase "comprehensive test program" was evidently first used in the April 19 conference call by Mr. McCoy. Since the beginning of this call was not recorded and Mr. McCoy testified that Mr. Bockhold had used this phrase during the unrecorded portion of the call (McCoy at 12-13), Georgia Power disagrees with this proposed finding.

NRC PF 88 construes Georgia Power's testimony concerning the telephone call between Mr. McCoy and Mr. Brockman on April 19 as indicating that Mr. Brockman understood what the term "comprehensive test program" meant. While it is unclear how well Mr. McCoy explained the intended meaning of that term, the main import of this testimony is that it attempted to make sure that the NRC would not be misled, and was not trying to conceal anything.

NRC PF 88 states that since GPC personnel at the site did not know the parameters of the "comprehensive test program," Georgia Power could not have informed the NRC of this information. Mr. McCoy, however, could have informed Mr. Brockman of Mr. Bockhold's definition of the term (see GPC PF 161-62), and Mr. Shipman's remarks on April 19, 1990 indicate that this was the case -- that Mr. McCoy explained to Mr. Brockman the basis of the count as Mr. Bockhold had described it. GPC Exh. II-2 at 28.

NRC PF 97 proposes that the Board find that Mr. Mosbaugh could not use the Webb list to determine the accuracy of the LER statement, in part because the Webb list contained no reference to the comprehensive test program. The position expressed in this proposed finding is inconsistent with NRC PF 63 (that Mosbaugh "understood that GPC intended that the end date of the period for counting starts to be used in the LER was to be April 9, 1990, the same day as used in the April 9 letter as it repeated that start count") and NRC PF 96 ("the Webb-Odom list clearly shows that the April 9 letter and presentation DG1B start count (18 consecutive successful starts) was in error"). Recognizing that Georgia Power intended to refer to the original count through April 9, Mr. Mosbaugh knew, from the Webb list, that this count was incorrect under any definition of the comprehensive test program. See GPC PF 238. The NRC Staff also refers to an

inaccuracy in the Webb list. This inaccuracy did not affect, and therefore was irrelevant, to the determination that the original start count was incorrect.

NRC PF 111 states that upon his return from SRO school, Mr. Greene "shadowed" Mr. Mosbaugh for a week. Georgia Power is not aware of any support for this proposed finding.

NRC PF 137 states that it was unreasonable to rely on QA audit assumptions as GPC made no effort to contact the individuals who initially collected and reported the data to determine what went wrong. There is no evidence that either Mr. McCoy or Mr. Hairston knew or were able in June 1990 to recognize from the QA audit report that the audit team had failed to interview Mr. Cash.

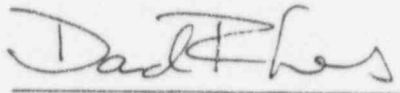
NRC PF 145 states that "the actions of Messrs. Frederick, Greene, Majors and Horton can be characterized as "careless disregard" since Mr. Mosbaugh's told them of his concerns and they did not resolve the[m]." Georgia Power believes that review of the GPC Exh. II-44 shows that these individuals were not callously indifferent - they simply were not persuaded by Mr. Mosbaugh's comments. Georgia Power disagrees with the Staff's characterization of these individuals' explanations as "blame shifting." None of the individuals blamed Mr. Mosbaugh for the inaccuracy of the June 29 cover letter. They just provided their explanation why Mr. Mosbaugh's comments did not persuade them at the time that there was a problem.

With regard to the August 30 letter, NRC PF 152 states that the evidence shows that GPC understood that the NRC was looking for an explanation for the error. GPC does not believe that the evidence supports this position. Compare GPC PF 349-50.

NRC PF 258 states that Mr. Bockhold's notes of the April 9 presentation do not reflect the I&C technicians initial inability to correctly use the VP-1114 instrument. Mr. Bailey's notes of the April 9 presentation, however, clearly indicate that the NRC was told during the presentation that site personnel had had to learn how to use the "back-up" instrument properly. Int. Exh. II-70 at 4-5.

NRC PF 260 states that, when questioned as to what dew point readings the "initial reports" language referred to, Mr. Briney stated that it encompassed readings taken on April 6 and 7. Mr. Briney indicated that he was not certain. Tr. 12286-87 (Briney). He also testified that he believed that his review of the April 9 letter during the hearing was the first time that he had seen the letter, that he did not prepare the letter, and he was not sure what the drafters were trying to show. Tr. 12285, 12290 (Briney). Thus, Mr. Briney's interpretation of the letter is not definitive.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of

GEORGIA POWER COMPANY,
et al.

(Vogtle Electric Generating Plant,
Units 1 and 2)


Docket Nos. 50-424-OLA-3
50-425-OLA-3

Re: License Amendment
(Transfer to Southern Nuclear)

ASLBP No. 93-671-01-OLA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of "Georgia Power Company's Reply to Intervenor's and NRC Staff's Proposed Findings of Fact and Conclusions of Law," dated December 22, 1995, 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 December, 1995.



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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)	50-425-OLA-3
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)	(Transfer to Southern Nuclear)
(Vogtle Electric Generating Plant,)	
Units 1 and 2))	ASLBP No. 93-671-01-OLA-3

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