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ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

~~Attorney~~
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JAMES E. JOINER, P.C.

DIRECT 404 885 3168

December 19, 1995

VIA FEDERAL EXPRESS

Mr. James Lieberman
Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: October 4, 1995 Predecisional Enforcement Conference concerning Hobby v. Georgia Power, 90-ERA-30.

Dear Mr. Lieberman:

On November 2, 1995, Mr. Hobby's counsel before the Department of Labor, Michael D. Kohn, filed a Response to Predecisional Enforcement Conference Presentation of Georgia Power Company and Request for Imposition of Enhanced Penalties ("Response"). In that Response, Mr. Kohn argues that Georgia Power Company ("GPC") made "materially false and misleading statements" when it stated its position at an NRC Predecisional Enforcement Conference held on October 4, 1995. As is shown in the Attachment, GPC made no statements at this Conference that were false or misleading and the representations attacked by Mr. Kohn are consistent with the record before the Department of Labor and the Atomic Safety and Licensing Board ("ASLB").

The Attachment addresses only Mr. Kohn's accusations that Georgia Power Company made "materially false and misleading statements" in its Predecisional Enforcement Conference presentation. It does not address his arguments with GPC's position, including that: 1) the Secretary of Labor's Decision And Remand Order dated August 4, 1995 is a final order and no longer appealable; 2) the Decision And Remand Order collaterally estops Georgia Power Company; 3) Georgia Power Company has no legitimate basis for appeal; and 4) the Secretary of Labor did not make impermissible credibility determinations.

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PDR

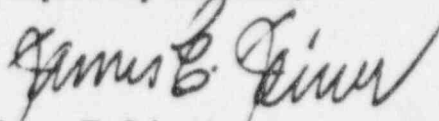
Mr. James Lieberman

December 19, 1995

Page 2

For your convenience, I am enclosing two extra copies of the Attachment.

Respectfully submitted,


James E. Joiner

JEJ/sbk

Attachments

ATTACHMENT

GEORGIA POWER COMPANY DID NOT MAKE
"MATERIALLY FALSE AND MISLEADING STATEMENTS"

I. The Creation Of NOCA And Why It Was Established In Atlanta

Mr. Kohn accuses GPC of making a material false statement when it showed a slide that contained a comparison of Judge Williams' factual findings concerning the creation of the Nuclear Operations Contract Administration ("NOCA") group and the Secretary's finding concerning why NOCA was established in Atlanta. Mr. Kohn claims "The presentation of this slide stands for the proposition that the ALJ correctly determined that NOCA was created to give Mr. Hobby something to do in Atlanta. Making this assertion to NRC staff represents a material false statement." (Response at 19).

GPC made no material false statement in presenting this side-by-side comparison. The plain fact of the matter is that both the ALJ and the Secretary made those differing factual conclusions and GPC's point was that Judge Williams' factual conclusion was more supportable than the Secretary's. Compare Recommended Decision and Order ("RDO") at 40 with Decision and Remand Order at 21-22, n.13.

To support his accusation that showing the slide constitutes a misrepresentation, Mr. Kohn quotes a portion of Bill Dahlberg's testimony before the ASLB. (Response at 19). Dahlberg's ASLB testimony is that he established the NOCA group and that it was his idea to create this organization. (See ASLB Tr. 1193, 1197).

Mr. Dahlberg's ASLB testimony concerns his responsibility for the creation of NOCA, but it does not address the input received from others, specifically Mr. Hobby. As the Department of Labor record shows, Mr. Hobby recommended the creation of NOCA to his bosses, George Head and Grady Baker, who then presented it to Dahlberg. Mr. Baker supported the creation of NOCA because he had nothing else for Hobby to do in Atlanta.

Hobby also wrote the memorandum ultimately signed by Dahlberg that created NOCA and Hobby's General Manager position and drafted the Position Questionnaire that set out the goals of his job. (See RDO at 40; Decision and Remand Order at 21-22, n. 13; Tr. at 85-86, 238, 659-60, 687, 700-01, CX 13; CX 22 at 3; see also ASLB Tr. at 2329-2330).



DATE ISSUED: NOVEMBER 8, 1991

Case No.: 90-ERA-30

In the Matter of

MARVIN B. HOBBY,
Complainant

v.

GEORGIA POWER COMPANY,
Respondent

Michael D. Kohn, Esquire
David K. Colapinto, Esquire
Kohn, Kohn & Associates
For the Complainant

James Joiner, Esquire
William N. Withrow, Esquire
Troutman, Sanders, Lockerman
For the Respondent

Before: JOEL R. WILLIAMS
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under the employee protection provision of Section 210 of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §5851, and the regulations promulgated thereunder, 29 C.F.R. Part 24.

The Complainant filed his initial complaint under the Act on or about February 6, 1990. This was supplemented on February 28, 1990. On March 26, 1990, the Acting Regional Director determined that the Complainant had been discriminated against for engaging in activity protected under the ERA and called for his restoration to his former position. The Respondent filed a timely request for a hearing. They also filed a complaint with the Secretary of Labor contending that the March 26, 1990 determination was made without their having been afforded a reasonable opportunity to participate in the investigation. Thereafter, the case was reconsidered by the District Director, Wage and Hour Division, based on additional information furnished by both parties. On May 25, 1990, the District Director amended the prior findings to the effect that the elimination of Complainant's job was not based on his having engaged in any

testify that Mr. Williams had informed him that he had talked to Mr. Adams, Mr. Baker and Mr. Boren before making the performance evaluation. (T-215)

The Complainant was advised on February 23 that it would not be necessary for him to report to work anymore.

Findings of Fact

Based on the foregoing evidence, I reach the following factual findings for the reasons stated:

The Complainant had experience in the nuclear energy area. Upon the establishment of SONOPCO, Mr. McDonald, believing that the Complainant would be valuable to the project, was desirous of having him transfer to SONOPCO. Whether it was because he had already formed his opinion of Mr. McDonald as expressed in his June 1989 letter to Admiral Wilkinson, or whether it was because he did not want to relocate, he declined to transfer. Instead, he designed a job for himself which he could perform at the Atlanta headquarters of Georgia Power, i.e. manager of a nuclear operations contract administration group. He then sold the idea to Mr. Head, whom he respected and with whom he apparently had a good relationship. Mr. Barker reluctantly went along with the idea because he did not have anything else for the Complainant to do. Mr. Dahlberg's approval was based, in part, on his belief that incorporation of SONOPCO would occur within a matter of months.

The meeting in preparation for the Fuchko and Yunker trial occurred six days after the memo establishing NOCA was issued. I find the Complainant's testimony, in regard to his having been told by anybody involved in the proceeding that he would have to change any testimony that he would give in that matter to conform to that of Mr. McDonald, to be totally unbelievable. I fail to see where Respondent's attorneys would even consider having the Complainant testify about the SONOPCO selection process as he was not involved in the same and any testimony he would have given relating thereto would have been nothing more than hearsay. The Complainant is unable to identify the attorney who purportedly approached him with such an incredible request. The two partner attorneys, who conducted the two sessions which the Complainant attended, have denied making such a statement and I consider them to be credible witnesses. There were two other associate attorneys present at the meeting, but the Complainant made no attempt to subpoena them to the hearing. Although he allegedly relayed the purported conversation to Mr. McHenry the next day,

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: August 4, 1995
CASE NO. 90-ERA-30

IN THE MATTER OF

MARVIN B. HOBBY,

COMPLAINANT,

v.

GEORGIA POWER COMPANY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

DECISION AND REMAND ORDER

This proceeding arises under the whistleblower provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988), and is before me for review of a Recommended Decision and Order (R. D. and O.) issued by the Administrative Law Judge (ALJ) on November 8, 1991. See 29 C.F.R. § 24.6(b) (1994). The ALJ recommends dismissal of the entire complaint. I disagree and remand for the ALJ to determine a complete remedy.

BACKGROUND

Complainant, who has "unsurpassed" knowledge of the nuclear industry, was employed by Respondent in 1985 as the Assistant to the President. Complainant's Exhibits (CX) 2, 7.^{1/} Complainant

^{1/} The evidence adduced in this case has been summarized by the ALJ at pages 2-40 of the R. D. and O.

"unsurpassed;" and indicated there was growth potential. CX 7. In the year before, Baker rated Complainant's performance as "excellent" and "commendable" and wrote that there was "no known limit" to Complainant's future growth possibilities with Respondent. CX 4. I find no legitimate, nondiscriminatory reason for Baker's change of opinion. Williams, who more closely observed Complainant's performance during the spring and fall of 1989, had no complaints about Complainant's performance and admitted that Complainant and Smith went "a long way in finalizing" the managing board agreement. T. at 464. Baker, on the other hand, opined that nothing was accomplished by the discussions between Complainant and Smith. T. at 685.

Even if Baker "didn't really have a strong feeling that [NOCA was needed] to start with," T. at 688, and even if Respondent had decided that it made a mistake in creating NOCA, these also are not bases for suddenly concluding that Complainant's performance and potential were "zero." The drastic, inadequately explained change in Respondent's perception of Complainant's work performance is further evidence of pretext.

Nor does the delay in SONOPCO's incorporation justify Respondent's explanation of "no function." Williams testified that the incorporation and contract issues were not significant to his decision. T. at 407. Moreover, Dahlberg created NOCA to perform work beyond contract administration. T. at 328.^{13/}

^{13/} The ALJ erred in finding that Complainant designed NOCA as a means to stay in Atlanta. R. D. and O. at 40. Dahlberg
(continued...)

There is another significant reason why Respondent's explanation of "no function" is not credible. It is undisputed that on January 25, after Respondent had removed Complainant from his job, Williams assigned another one of his managers, Bill Smith, to take responsibility for Complainant's activities. Williams ordered Complainant to turn over his files to Smith. T. at 207. Since Respondent appointed a replacement, a function necessarily existed.^{11'}

The December 27, 1988, memo creating NOCA and naming Complainant as manager, states:

It is important for us to realize that while our nuclear operations may be managed in Birmingham and ultimately will be managed by a separate Southern subsidiary, Georgia Power will be held accountable by our regulatory groups, our stockholders, and the public for the operation and performance of our nuclear units. It is essential that Georgia Power Company be involved in the operations of our units, monitor their performance and integrate nuclear operations goals, accountabilities, and financial planning into Georgia Power Corporate Plan.

RX 18, Tab 2. These statements not only show that there was a legitimate function to be performed by an organization separate from SONOPCO, but they reveal that Complainant's protected complaint about the reporting structure also was implicit in his complaints about McDonald's lack of cooperation with NOCA. Baker's criticism of Complainant's complaints about lack of

^{11'} (...continued)

testified that he established NOCA in Atlanta because that is where he is located. T. at 329.

^{14'} Respondent's evidence that two other positions were eliminated during this time is also unpersuasive. Those positions resulted from voluntary resignations. T. at 394.

1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 ATOMIC SAFETY AND LICENSING BOARD

5 HEARING

6 -----X

7 In the matter of: : 50-424-OLA-3

8 GEORGIA POWER COMPANY, et al. : 50-425-OLA-3

9 : Re: License Amendment

10 (Vogtle Electric Generating : (transfer to

11 Plant, Unit 1 and Unit 2) : Southern Nuclear)

12 : ASLBP No.

13 -----X 93-671-01-OLA-3

14 Wednesday, January 4, 1995

15 Hearing Room T 3B45

16 Two White Flint North

17 11545 Rockville Pike

18 Rockville, Maryland

19 The above-entitled matter came on for hearing,
20 pursuant to notice, at 9:00 a.m.

21 BEFORE:

22 PETER B. BLOCH Chairman

23 JAMES H. CARPENTER Administrative Judge

24 THOMAS D. MURPHY Administrative Judge

25 NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20006

9501060226

1 APPEARANCES:

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3 On behalf of the NRC:

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5 CHARLES A. BARTH, ESQ.

6 JOHN HULL, ESQ.

7 MITZI A. YOUNG, ESQ.

8 of: Office of the General Counsel

9 U.S. Nuclear Regulatory Commission

10 Washington, D.C. 20555

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13 On behalf of the Licensee:

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10 On behalf of the Intervenor:

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12 MICHAEL D. KOHN, ESQ.

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I N D E X

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>BOARD</u>
1						
2						
3	A.W. Dahlberg	1059	1052			1064
4			1061			1069
5	Prefiled Testimony		1061			1071
6						1079
7						1090
8						1094
9						1098
10						1098
11						1107
12						1112
13						1120
14						1131
15	Patrick McDonald	1247	1252			1248
16	Prefiled Testimony		1249			1251
17						1254
18						1255
19						1256
20						1257
21						1260
22						1262
23						1270
24						1273
25						1277

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WASHINGTON, D.C. 20006

1 monitor their performance and integrate the nuclear
2 operations goal accountabilities to the financial planning
3 of the Georgia Power corporate plan." Do you see that?

4 A Yes.

5 Q And that was one of your intentions for
6 setting up this group NOCA?

7 A That's correct.

8 Q So part of the reason for setting up NOCA was
9 to monitor the performance of your nuclear plants?

10 A Yes.

11 Q Who made the decision to set up NOCA?

12 A I did.

13 Q And who did you consult on that?

14 A Mr. Baker, Mr. Head -- I think those were the
15 -- probably Mr. Scherer.

16 Q And what position did Baker have?

17 A He was a senior executive VP.

18 Q And Mr. Head?

19 A Mr. Head was senior vice president. He had
20 the power generation department of our business.

21 Q And Mr. Scherer?

22 A He was -- at that time, he was still chairman.

23 Q Now in regards to Baker and Head, did either
24 of those individuals ever had responsibility for nuclear
25 operations prior to December of 1988?

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WASHINGTON, D.C. 20005

1 discussions with them, this Oglethorpe Power, the
2 Municipal Electric Authority of Georgia and Dalton about
3 our responsibilities to them. And I was certainly aware
4 of our responsibilities there.

5 CHAIRMAN BLOCH: But you never received any
6 legal advice on your licensing responsibilities?

7 THE WITNESS: Yes, I did. I realized that
8 Georgia Power still had the responsibility to operate the
9 plants, and we thought we were still doing that. In fact,
10 we were still doing that.

11 CHAIRMAN BLOCH: And did the legal advice
12 suggest that it's essential that you be involved in the
13 operations of the units by having an oversight of this
14 type?

15 THE WITNESS: No.

16 CHAIRMAN BLOCH: So whose idea was that?
17 Where did that come from?

18 THE WITNESS: To have this organization? It
19 was mine.

20 CHAIRMAN BLOCH: And when there was no
21 contract, did that make it more important or less
22 important to monitor?

23 THE WITNESS: Well, I think less important.
24 The ultimate thing that happened here is that we dissolved
25 the organization because I found that there was not a

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WASHINGTON, D.C. 20005

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME I</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Tuesday, October 23, 1990

The above-entitled matter came on for hearing,
pursuant to Notice, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHEROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

I N D E X

WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Marvin B. Hobby	44	219	--	--

EXHIBITS:

	<u>IDENTIFIED</u>	<u>RECEIVED</u>
<u>Complainant's:</u>		
Nos. 1 thru 21	Premarked	10
Nos. 23 thru 25	Premarked	10
Nos. 27 thru 35	Premarked	10
<u>Respondent's:</u>		
Nos. 1 thru 18	Premarked	12
No. 19 - Letter 5/1/89	254	256

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Thomas J. McHenry	279	293	298	--
Alfred W. Dahlberg	302	321	361	--
Dwight H. Evans	363	376	--	--
Fred D. Williams	399	440	--	--
Thomas G. Boren	475	501	508	--
Lee Glenn	509	520	523	--
William R. Evans	525	539	--	--

EXHIBITS:IDENTIFIED RECEIVED

Complainant's:

Nos. 36 & 36-A - Dahlberg Calendar	350	352
Nos. 37 & 37-A - Williams Calendar	460	460
Joint:		
No. 1 - Stipulation	398	398

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
E. P. (Dennis) Wilkinson	544	557	--	--
Joseph M. Farley	564	579	--	--
R. P. McDonald	501	619	--	--
George F. Head	643	658	--	--
H. G. Baker	678	690	705	709

EXHIBITS:IDENTIFIED RECEIVED

Complainant's:

No. 38 - Wilkinson bio	548	548
------------------------	-----	-----

1 vice president/nuclear operations" which would be Mr.
2 Hairston "concurrs in that rating."

3 Q. After you received your 1988 performance
4 evaluation, did you have any discussions about what role you
5 would continue to play at Georgia Power Company? Let me
6 withdraw that.

7 Prior to receiving your 1988 performance
8 evaluation did you have any discussions about what role you
9 would have played at Georgia Power Company?

10 A. I had -- as I mentioned earlier, I was on loan so
11 to speak to nuclear operations from Mr. Baker's office.

12 I had determined that I did not want to move to
13 the SONOPCO project in Birmingham. I had discussed this
14 with Mr. Baker, and I had a conversation with Mr. Baker
15 about the establishment of an interface group between
16 Georgia Power Company and SONOPCO.

17 I had discussed that with Mr. Baker I guess in the
18 October-November time frame of 1988.

19 Q. And after your performance appraisal, your 1988
20 performance evaluation, did those discussions continue?

21 A. We continued to have the discussions in late 1988.
22 I guess in December of 1988 I talked with Mr. Baker about
23 it, I also talked with Mr. Head about it, and I was told by
24 Mr. Head that Mr. Baker and he had met with Mr. Dahlberg,
25 and they had determined to set up a Nuclear Operations

1 Contract Administration group.

2 Q. Were you asked for any input into the
3 establishment of the Nuclear Operations Contract
4 Administration, or NOCA?

5 A. Yes, sir. Mr. Head asked me what my feelings were
6 as to what this group should do and what they should be
7 responsible for, and I provided that information to Mr.
8 Head.

9 He reviewed it, and he finally came back and said
10 "Okay, how about providing to me a memo which Mr. Dahlberg
11 can sign which sets up the Nuclear Operations Contract
12 Administration group."

13 Q. I call your attention to Exhibit 8.

14 A. Yes, sir.

15 Q. Is this an approximation of the memo you drafted
16 for Mr. Head?

17 A. Yes, it is.

18 Q. And can you tell me what differences there are
19 between the memo you drafted for Mr. Head?

20 A. Yes, it is.

21 Q. And can you tell me what differences there are
22 between the memo you drafted and the one attached as Exhibit
23 8?

24 A. The memo that I prepared for Mr. Head did not have
25 the carbon copies at the bottom.

1 Birmingham, then I think it's incumbent on all the people to
2 support that.

3 Q. And I believe you testified this morning that you
4 wrote that memo that Mr. Dahlberg signed dated December 27,
5 1988 setting up the nuclear operations contract
6 administration group; correct?

7 A. I did.

8 Q. And so you wrote the language about how that group
9 would be interfaced with the SONOPCO project; correct?

10 A. I wrote the language, gave it to Mr. Head who
11 approved it and sent it to Mr. Dahlberg who signed it.

12 Q. But at least you do agree with me that there's
13 nothing illegal and nothing improper if Mr. McDonald was
14 motivated by his belief that Georgia Power Company did not
15 need separate nuclear expertise at 333 Piedmont?

16 A. I don't believe there's anything illegal in that,
17 no.

18 Q. Now, am I correct, Mr. Hobby, that the only
19 regulatory concern you raised in the April 27 memo relates
20 to the reporting structure at SONOPCO which you identify on
21 Page 7 of the memo?

22 A. Yes, sir.

23 Q. And I believe you acknowledge, do you not, Mr.
24 Hobby, that this is not an issue of plant safety?

25 A. I did not say it was, sir.

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME III</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Thursday, October 25, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

1 project formed, right after nuclear operations moved out of
2 Atlanta over to Birmingham -- right? -- and had a
3 conversation about an idea that Marvin thought up about a
4 good way to interface the two companies?

5 A. I don't know what you mean by an idea about a good
6 way to interface the two companies. I don't understand what
7 you mean.

8 Q. Okay. Marvin came and said "You know, we have to
9 think about how we're going to interface, and I'd like to
10 give you a position paper on it, I'd like to look into it,"
11 and he provided you a position paper; correct?

12 A. We had discussed things that we would look into
13 from when the SONOPCO was set up, yes.

14 Q. And Marvin Hobby presented you with a position
15 paper which you showed to Mr. Grady Baker and then got
16 President Dahlberg to agree that that was the way the
17 interface should work?

18 A. We set out how we were going to set up our
19 organization, which consisted of two accountants and a
20 secretary and two performance engineers, and we had discussed
21 this, and I told him we only wanted to start out with one to
22 get it started, that's all, yes.

23 Q. But --

24 A. If this is the position paper you're talking about.
25 I mean it was not, I guess not a position paper as such, it

1 was our idea as to how we thought we should operate.

2 Q. Okay. And Marvin wrote a memo which President
3 Dahlberg signed off on establishing his job?

4 A. That's right.

5 Q. Okay. And was that before -- That was signed in
6 December -- correct? -- of '88?

7 A. December of '88, right.

8 Q. And Mr. Hobby's job was created before -- it was
9 such a good idea that you created the job before you had the
10 position name selected, before Marvin Hobby told you what his
11 salary was going to be?

12 A. No. No, the position was not created until after
13 that happened. He was not even given a job until -- we had
14 talked about it earlier, but the position was not created
15 until the letter created the position.

16 Q. Okay. What I'm saying is the letter created the
17 position, but when the position was created you hadn't
18 discussed with Marvin what his salary was going to be?

19 A. No, I don't think we had discussed it at that time.
20 We discussed it after the thing was -- in fact, we wrote a
21 position description after as far as I remember. I don't
22 remember the dates on it.

23 Q. Okay. And the discussion that ensued was that
24 "Look, if you want me to handle this job, I want to be a
25 Level 20." Isn't that what Marvin wanted?

1 I was surprised when I found I believe that that
2 number was five employees in the group. I thought that was
3 probably more than were required for anything that I had in
4 mind that they might do, so I told them to not hire any more
5 people for this group until we got a better definition of
6 exactly what they were going to accomplish and what they were
7 going to contribute to the overall well-being of the company.

8 At the general office administrative groups tend to
9 grow like that unless you are alert to these sorts of things.

10 Q. When you gave the direction, Mr. Baker, to Mr.
11 Shannon and Carey Adams that Mr. Hobby should not add any
12 people to his organization, were you attempting in any way to
13 punish Mr. Hobby for anything he had done, or retaliate
14 against him in any way for something he had done?

15 A. No. It was -- you know, it was my duty, it was
16 what I was supposed to do is to keep an eye on those things
17 and keep the administrative and overhead organizations from
18 growing inordinately, and Mr. Hobby was not the only one to
19 feel that from me.

20 Q. Okay. Let me ask you a question about the contract
21 administration group.

22 Did you form an opinion over the course of 1989 as
23 to the necessity of having a separate nuclear operations
24 contract administration group and, if so, what was your
25 opinion?

1 A. Yes, Mr. Hobby told me that a number of times that
2 he couldn't get cooperation from SONOPCO, but I considered
3 that to be Mr. Hobby's problem, and not SONOPCO's problem and
4 not my problem.

5 Mr. Hobby's job was to establish a relationship
6 with SONOPCO. It was not my job to establish Mr. Hobby's
7 relationship, and it was not anybody else's job.

8 If somebody gets into the marketing department,
9 they're supposed to establish a relationship with our
10 customers if they get into that department, that's their job.

11 Q. Admiral Wilkinson earlier today testified that he
12 found Marvin to have extraordinarily good communications
13 skills.

14 A. With Admiral Wilkinson I'm sure that's the case.
15 If you would cross-examine some of the other people at INPO
16 that might not be their testimony.

17 Q. Now, you put and approved Marvin in the nuclear
18 operations contract administration group; correct?

19 A. Yes.

20 Q. Okay. And that was very dependent on communication
21 skills; correct? It was interface?

22 A. Yes.

23 Q. So obviously you must have had a high opinion of
24 Mr. Hobby's interface abilities, or you wouldn't have chosen
25 him for such an important interface job.

1 A. I think I testified earlier that the reason Mr.
2 Hobby was put in that job was because I had Mr. Hobby and I
3 didn't have anything else to do with him, and that was an
4 experiment to see if in fact Mr. Hobby could produce
5 something that was of value to the company.

6 Q. Now, is there any reason you would know why Mr.
7 Head would have the belief that the job was permanent? He
8 believed that the position was created with the understanding
9 it would be a permanent position.

10 A. There was nothing -- you know, there's no
11 documentation that this was a temporary job or anything of
12 that sort, but I don't take the -- I don't have the
13 understanding that every time you create a job at Georgia
14 Power Company it's eternal.

15 It's my management opinion that you should be as
16 quick to eliminate jobs as you are to make jobs. Otherwise,
17 your administrative staff grows enormously and your expenses
18 grow enormously with them.

19 Q. But you didn't eliminate Mr. Hobby's job, did you?

20 A. No.

21 Q. So --

22 A. But some of the people who did might have been
23 influenced by me, their philosophy might have been some of my
24 philosophy. I hope that's the case.

25 Q. Okay. Now, do you know when the final formal

Position Questionnaire

POSITION TITLE General Manager Nuclear Operations Contract Administration		
EMPLOYEE M. B. Hobby	REPORTS TO (POSITION TITLE) Senior Vice President Fossil & Hydro	
DEPARTMENT Nuclear Operations	PERSON'S NAME COMPLETING PQ	
DEPARTMENT NO.	REVIEWED BY (EMPLOYEE) <i>M.B.H. Hobby</i>	DATE 1/16/89
ORGANIZATIONAL UNIT (V.P.'S DEPARTMENT TITLE) Fossil & Hydro	APPROVED BY (IMMEDIATE SUPERVISOR)	DATE
WORK LOCATION 14/333	APPROVED BY	DATE

I. POSITION SUMMARY

Describe the primary reason this position exists in the company.

To manage the contract for the operation of the Company's nuclear power plants including establishing performance goals, accountabilities, long range nuclear planning, and budgets; to be responsible to the Joint Owners for the operation of the Company's nuclear power plants.

II. POSITION REQUIREMENTS

KNOWLEDGE: List the areas of special knowledge; (e.g., engineering, accounting, general business theories/practices, procedures). Indicate how they are used in this position.

Contractual obligations - understanding of contract law and the obligations of the contracting firm to Georgia Power Company and GPC's obligations to the Joint Owners, comprehensive knowledge of nuclear plant operations in regard to engineering principles, accounting, budgeting, etc. A detailed knowledge of joint agreement between the Joint Owners (OPC, MEAG, and the City of Dalton) and GPC regarding the operation of the nuclear plants. A detailed knowledge of the nuclear utility industry and of the operations of INPO and the NRC.

SKILLS: List the various skills needed in the position. Include technical, administrative and clerical skills, analytical/thinking skills, written and oral communication skills, managerial and interpersonal skills. Also, indicate how these skills are used in the position.

Technical and analytical skills to determine performance trends of the Company and industry; significant managerial and interpersonal skills to maintain positive interaction with contractor (SONOPCO), other Southern Company subsidiaries and the Joint Owners of the nuclear facilities, (OPC, MEAG, and the City of Dalton).

POSITION TITLE

General Manager N.O. Contract Admin.

EMPLOYEE

M. B. Hobby

III. POSITION RESPONSIBILITIES

List this position's Major Responsibilities in their order of importance (1,2,3, etc.) Indicate the approximate percentage of the total work time spent annually on each responsibility.

MAJOR RESPONSIBILITIES

% OF TIME

- 1. To manage all aspects of the contract with SONOPCO to achieve the safe, dependable, and cost effective operation of our nuclear power plants. 30%
- 2. To establish reasonable goals, accountabilities, and budgets for nuclear operations that support Georgia Power Company's Business Management Plan. 30%
- 3. To monitor nuclear operations to ensure performance is supportive of GPC's Business Management Plan. 15%
- 4. To serve as the primary interface between Georgia Power Company and SONOPCO and between Georgia Power and Joint Owners in nuclear operation matters. 15%
- 5. To be the primary interface with other Company functions including top management and with the Public Service Commission on matters related to nuclear operations including budget, financial planning, prudence and performance. 10%

POSITION TITLE

General Manager N.O. Contract Admin.

EMPLOYEE

M. B. Hobby

IV. POSITION ACTIVITIES

COMPLEXITY/DIVERSITY: List the most difficult or challenging aspects of this position. Also, if this position is responsible for coordinating/managing a variety of activities or functions, please list these management tasks.

The most challenging aspect of the job involves the relationship between GPC and SONOPCO. It will be most important for this position to ensure that SONOPCO management understands and incorporates the goals and the accountabilities that GPC develops for them and that SONOPCO operates in a manner that supports the accomplishment of GPC's corporate objectives and Business Plan.

JUDGEMENT/DECISION-MAKING: List examples of the types of judgements this position requires and the frequency (daily, weekly, monthly, etc.)

- Budgeting Process * Approve the Nuclear Operations annual budget - annually
- * Monitor budget - daily
- Plant Monitoring * Approve annual goals - annually
- * Monitor goals' achievement - daily
- Information Resource * PSC hearings on prudence - monthly
- * Top management requests - daily
- * Board of Directors - monthly

RISK: List examples of risk taking that may be required of this position, (i.e., taking action where the eventual outcome is not clearly known.)

The primary risks are to ensure GPC's interests are protected while maintaining a professional and cooperative relationship with SONOPCO.

CREATIVITY/INNOVATION: List examples of new methods, procedures or concepts the position may develop.

Since this agreement is rather different, there will be opportunities available to develop alternative budgeting methods. The uniqueness of the agreement also offers the chance to develop more meaningful performance indicators. New communicative methods could be developed to disseminate information on SONOPCO to interested parties.

V. RESULTS OF ACTION

CONTRIBUTION: List the direct and/or shared responsibilities of this position that contribute to the success of the company and/or organization.

The ability of this position to influence the management of SONOPCO to operate in a manner that best meets the interest of GPC would be significant. Also, this position has the responsibility for coordinating all the administrative activities between the two Companies. Another area of concern would be the position's ability to determine the budget needs of SONOPCO based on operating goals that are established through this position's direction.

POSITION TITLE	EMPLOYEE
General Manager N.O. Contract Admin.	M. B. Hobby

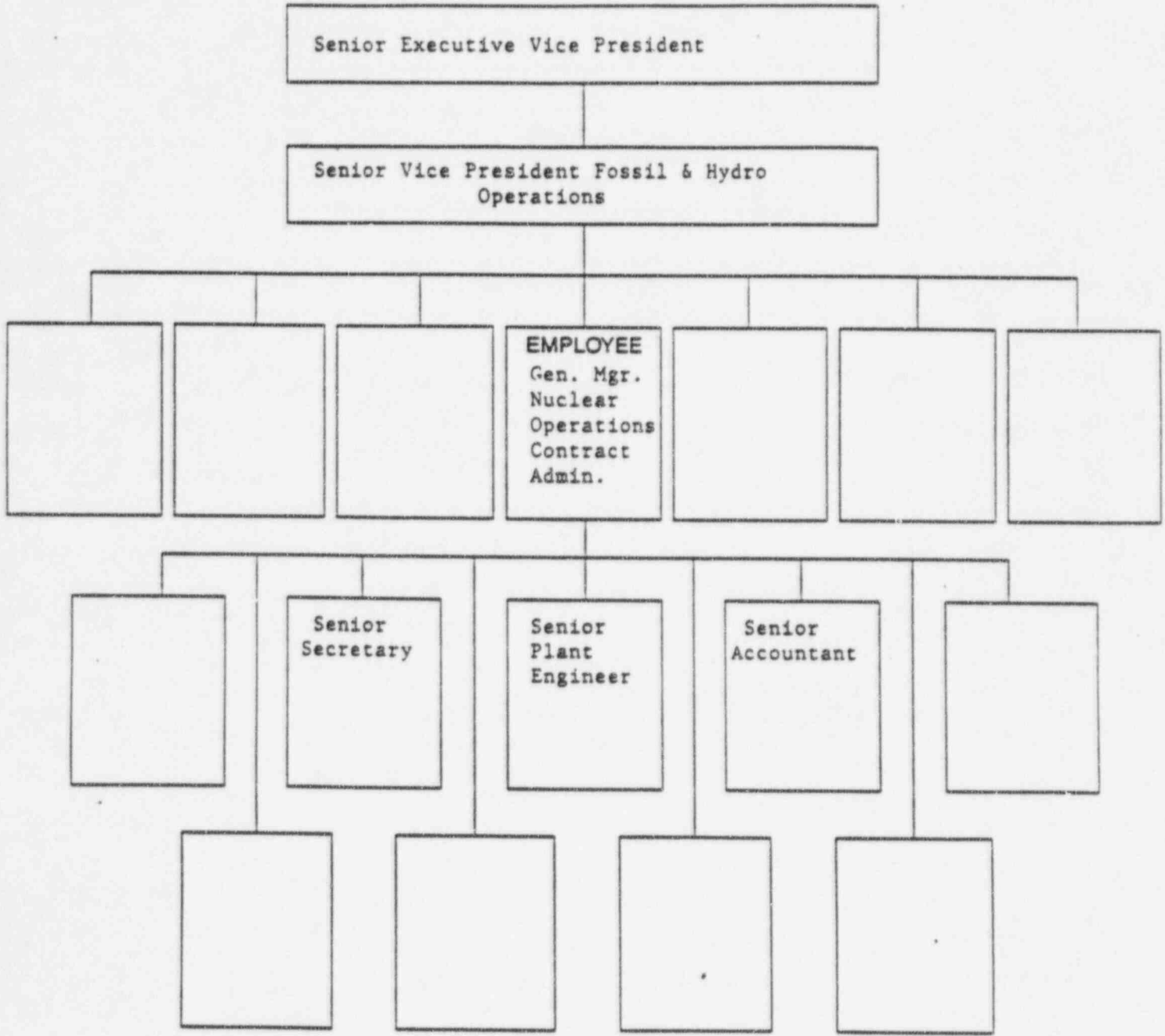
VI. SCOPE

Provide annual statistics that convey the scope and volume of this position. (Revenue, customers, megawatts, capital, O & M, contracts etc.)

Plant Hatch 1630 MW	\$250 MM Operating Budget Hatch and Vogtle
Plant Vogtle 2320 MW	\$73 MM Capital Budget Hatch and Vogtle

VII. ORGANIZATION

Complete the organization chart below. Identify the two positions above this position, peer positions reporting to the immediate supervisor/manager and subordinate positions reporting directly to this position (use titles only).



	EXEMPT	NONEXEMPT	UNION	CONTRACT	TOTAL
PERSONNEL SUPERVISED	<u>2</u>	<u>1</u>	<u> </u>	<u> </u>	<u>3</u>

June 8, 1989

Dennis:

I promised you in the earlier letter that I would discuss a little of what is going on at Georgia Power. You have read several accounts that I have sent you related to the IRS investigations, FBI investigations, political campaign contributions, etc. There is, to my knowledge, no progress in these areas and I am told that these investigations will be going on for years. There is a lot of speculation as to whether Mr. Addison will be able to weather the storm - - after all, he was the CEO at Gulf Power when many of these allegations occurred. The situation in the company - - throughout Southern Company - - is horrible.

I will get more specific about my situation in a moment. But, I must admit that I am grateful to have worked at Georgia Power when Mr. Miller was President. He was a no nonsense guy, hard working, competent, inquisitive, honorable, and he worked for the Company. He lived, breathed, and exited for Georgia Power. The man could lead. He asked questions. He asked for input. When people disagreed with him, that was fine. It seemed it was only an opportunity for him to ask more questions and he would admit when he learned something. Even though he was President, he was not afraid to learn something or hear a new idea. He was not afraid to say he didn't know. He wasn't afraid to say he didn't understand something. He wasn't afraid to ask for advice. He didn't mind people challenging him - - not personally but on an issue.

Mr. Miller had integrity. He gave us guidance and direction and his message to us was clear. He also held you accountable for your performance. As one lower level supervisor in building services said to me in lamenting Mr. Miller's retirement, "We are really going to miss him. You may not always agree with the direction he gives you, but you always know where you are going." She was right.

Mr. Miller also focused his attention on where the company should be headed and what was required to get there. He really took an emotional interest in the 15,000 employees we had and he wanted them to perform. And, if they performed, he took care of them whether he liked them or not. It was not essential that Mr. Miller like you because he judged each employee on performance and what they were doing for Georgia Power.

Mr. Miller could make a decision. Sometimes he would make a snap judgement based upon his technical knowledge, his experience, his managerial ability, or just his hunch. But, when a decision was made, that was the end. Everybody jumped. He also protected the company. There were several examples where the System wanted Georgia Power to change what they were doing although what we were doing was turning out the profits. But, the bureaucrats at Southern, who wanted to increase their power, demanded that all operating companies abide by the same set of rules. Mr. Miller said no that he was in charge of operating Georgia Power and, although some people at Southern got bent out of shape, Mr. Miller's decision ruled the day.

A lot of people remember Mr. Miller as a tough, authoritarian figure. I remember him as a great leader, someone to be admired, a role model, and a loving and caring man who dedicated his life to Georgia Power and its employees.

Yet, Mr. Miller was a strong man. Several senior executives were glad to see him retire because he ruled firmly and would not let some of them put into effect their lunacy. I am convinced that several executives wanted their day in the sun and made suggestions just to make themselves look good. But, their suggestions died because they did not have the courage to bring them to Mr. Miller for approval.

What resulted was a small group of executives who wanted so desperately to be in charge that they looked for every opportunity to enhance their position - - not the company's position - their personal position. Some of them would have sold their mother and the company outright if they could have positioned themselves better.

There was one exception. George Head. George was a technically competent, hard headed, hard driving manager who did an exception job. He had a weakness in that he did not have as broad a perspective as did Mr. Miller and George found it hard to listen and learn. He felt he knew his business sufficiently well to do his job and listening, learning, taking advice, or changing was difficult for him. George could not adapt. I don't mean he just didn't want to, he couldn't.

After Mr. Miller left (actually before Mr. Miller left), George was assigned to report to Grady Baker. The organization at the time was Mr. Scherer was Chairman of the Board and CEO, and Grady Baker and Elmer Harris were the two Senior Executive Vice Presidents. Grady had planned his career such that when Mr. Miller retired, he would become President. Elmer was brought over from Alabama Power to head External Affairs and the word was that he could become Chairman and CEO of Georgia Power. Grady even told everyone that would listen to him that he had picked Elmer to be CEO at Georgia because he (Grady) did not want the job - - he wanted to be President and COO.

Mr. Addison became President of Southern and said Georgia Power did not need both a President and a Chairman of the Board. He said that when Mr. Scherer retired, we would have a President and a CEO and no Chairman. That crushed Grady. He had worked to become President all these years and now would not get the job. Then a horse race began to see whether Elmer would become President or whether Bill Dahlberg, President of Southern Company Services and an ex-Senior Vice President of Georgia Power who used to work for Grady, would become President of Georgia Power. Friction developed between Grady and Elmer. Grady was obviously pushing Bill. Bill won because, in part I think, Elmer got involved heavily in this campaign contributions fiasco.

Back to George. George and Grady did not get along. Grady is a Jekyll and Hyde. There are days when his thought process is brilliant. There are days when he acts like an idiot. And, you never know which person you are dealing with. I could go into a lot of examples where George and Grady disagreed but there is not need. I would point out that for years Southern had been trying to tell Georgia how to do its business.

Mr. Miller would not let that happen and Mr. Miller and George Head were on the same side. After Mr. Miller left, Grady tried to get on Mr. Addison's good side by agreeing to everything Southern Services wanted to do. George disagreed but Southern is gradually taking over.

Now, however, we are left with another poor situation. Elmer Harris is named President of Alabama, Bill Dahlberg at Georgia, and Allen Franklin at Southern Company Services. Each one of them is running for Addison's job. It appears that it is not so important that each one of them does his present job properly as it is that each stays on good terms with Mr. Addison. Southern is now run by a management council of all the CEOs. It is run by consensus. There are not disagreements. As a matter of fact, each CEO makes it his business to agree with what they think Mr. Addison wants to do. A rumor can start that Mr. Addison wants something done and all the CEOs break their necks to agree to it even if Mr. Addison knows nothing about it. We are in a heavily political arena here and right means little.

Into this situation enter one R. Patrick McDonald. This atmosphere is made for him; he excels in it. He is either 61 or 62, knows he is not going further in the Company, has retirement from the Navy, makes good money, and recognizes a vacuum in the leadership of the Company. He does what he wants to do, regardless of what any one else says, explains it without sticking to the truth, and, in general, is enjoying life. He gets along very well with Mr. Farley partly because he lies to Farley and partly because Mr. Farley hates Georgia Power Company. Pat can get away with anything by badmouthing Georgia Power. Farley is Executive Vice President of Southern for Nuclear and reports to Mr. Addison.

When the decision was made to bring Pat into Georgia Power (he is Executive Vice President of Georgia Power and Alabama Power) and to move our nuclear operations group to Birmingham, I decided after my experiences with him to not go. I went to Grady and told him that I didn't want to go and I recommended that we establish a contract administration group to protect Georgia Power - - not to manage SONOPCO - - but to advise GPC's senior management on how our performance was. Grady agreed to that and said he would talk to Dahlberg. I specifically remember him saying that whoever got the job as General Manager of his group would have a tough time trying to deal with Mr. Farley and Mr. McDonald. (Incidentally, everyone in senior management at Georgia Power that I have talked to: George Head, Grady, Elmer, Dwight Evans, and I have been told Dahlberg hates Pat McDonald. They think he is bordering on crazy, and he doesn't tell the truth).

Grady took his proposal to Dahlberg and at some point Grady and George Head talked to Dahlberg. They decided we did need such a group and it would be reporting to George Head. Dahlberg asked George who would head the group and George told him me. He said I was the only one in the Company left with nuclear experience, except George.

I was given the job on December 27. A copy of Dahlberg's memo announcing the promotion is enclosed. Prior to the memo going out, George asked me how I would structure the group. A copy of my memo to George on that subject is also enclosed.

Early in January, Pat McDonald came over to Georgia Power and told me to do something. I told him I would be glad to but that I needed to inform George Head since I now worked for him. Pat went livid. He asked what I was talking about and I went and got a copy of the memo for him. He got very made and said he opposed the creation of such a group. He said when the time came for such a group, he would set up the group, decide what it would do, and he would pick the head of it. He said he would not have any of this. I reported this to George.

From January until the end of April when George retired, I worked as well as I could to do the job assigned to me by the President. Unfortunately, Pat McDonald would not cooperate and would not let his people in Birmingham cooperate. I will not go into details except to say that Pat has refused to let his people in Birmingham even talk to me.

During this period, I told George we needed help from Dahlberg. I must have requested a meeting with Dahlberg 50 times. George asked for many, many meetings. He had maybe 4 or 5. Each time, Dahlberg would say he supported us, wanted us to do our job, and was behind us. But, he did nothing. Pat still would not cooperate. Finally, George asked me to call McDonald and set up a meeting between McDonald, Head, and me. McDonald would not set up the meeting.

Then George announced he was retiring. Dahlberg asked him to reconsider and remain with GPC but George refused. One of the reasons George refused was that he felt we did not have a leader at Georgia Power and that Bill would not make a decision and would not stand up for Georgia Power.

Throughout all of this, I have continued to remind people that Pat McDonald reported to Bill Dahlberg and, by NRC regulations, had better. I told Grady, George, Dwight Evans (EVP of External Affairs and a good friend of Dahlberg's), Chuck Whitney (Asst to Dahlberg), Fred Williams (VP of Bulk Power), and the attorneys that I thought we had a problem. I told them that, in my opinion, Pat McDonald worked only for Joe Farley, now EVP of The Southern Company, and if that were true we were in violation of our license and the NRC could shut our plants down. Several people shared my concern but would not agree or disagree. George Head agreed. Fred Williams said all we had to do was show the NRC the organization chart. I said Fred that won't cut it.

I talked to the lawyers. They were concerned and even went so far as to tell Hairston that if he were ever asked who he reported to he was to say McDonald who reports to Dahlberg. For the license on Unit 2 at Vogtle, the people were coached as to how to answer that question.

Finally, George has decided to retire and he went to Dahlberg and said there was one matter he wanted to get settled before he retired and that was our relationship with SONOPCO. Dahlberg responded that he knew there was a problem and he was going to meet with Farley and see if they could straighten it out. When George told me that, I said something like if McDonald report to Dahlberg why in the hell can't Bill just tell him what to do and why does Bill have to go and straighten it out with Joe Farley? George said, "Well, I guess we have just got the answer as to who McDonald really reports to." George also said that Dahlberg said it was a waste of time for Dahlberg to talk to McDonald.

When we learned that Grady and Dahlberg were going to meet with Farley, I told George that they shouldn't go talk to Farley without talking to him and me first about what problems we were having. He agreed and tried to set up a meeting with Dahlberg. Dahlberg wouldn't meet with us.

About this time, I was going up to George Head's office on the 21th floor and the Executive Vice President for External Affairs saw me and we starting talking. His name is Dwight Evans and he is pretty close to Dahlberg. Dwight said that if he were me he would start looking for another job in the company because he had heard that McDonald and Farley were out to get me fired or out of the job I was in.

I reported this to George and he said we had to talk to Dahlberg and Grady before they met with Farley. He tried but failed. He then suggested that I might go to Grady and tell him what we had heard and what our concerns were and try to get a meeting with Grady and Dahlberg. I went to see Grady and asked for a meeting. He said it was not necessary. I said something like Grady, the rumor is going around that McDonald and Farley are after my job. Won't you at least talk to George and me? He jumped up from his chair, threw his arms up high, laughed and continuing to laugh said, "Hobby, what can I say?" And, he then walked out of the room.

I told George. He got mad and said he was leaving the Company, wanted to get away from those people, and he basically apologized that the Company did not have a backbone and would not stand up for what was right. He said we did not have anyone in senior management at GPC "worth a shit" and that McDonald would win because no one at GPC would dare tackle Farley.

About the same time. I got a call from Fred Williams, VP of Bulk Power. He is the guy that really deals with most with the joint owners. He said he had been asked by Dahlberg and Grady to go to Birmingham to see if we could work out the problems between SONOPCO, GPC, and the joint owners. He asked me to write down the major problems I had in dealing with McDonald. He said he would not show it to McDonald but he would give it to Grady and Dahlberg for their meeting with Farley.

I wrote the memo (which is enclosed) and before giving it to Fred I showed it George Head. George agreed with the memo and felt so strongly about what I had said, he said he wanted to sign the memo with me. I have the original memo at home with my and George's signature. I took the memo to Fred Williams. He read it. He told me to destroy the memo because we did not want something like that in our files. He said the joint owners had been fussing about McDonald and who McDonald reported to and he said that my memo showed that McDonald reported to Farley and we could not have this memo in our files because it would prove Oglethorpe's argument.

I told Fred that this was a regulatory concern. I told him that the way he reacted indicated that we did have a problem and that we ought to fix the problem before we got into trouble with the NRC. I told him we ought to concentrate on fixing the problem not worrying about some memo. I further said if he did not have a problem, then the memo meant nothing.

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It only meant something if McDonald did not actually report to Dahlberg but to Farley. I told him I thought we were going to get in trouble with the NRC. He said there was not a problem that if the NRC ever asked about the issue we would just show them an organization chart. Then he said, you must destroy this memo. He also said he was going to keep a copy of the memo but he would not keep it and he would not let Grady and Dahlberg see it. It was because of that that I went to see George and later to see Grady.

I talked to George and we agreed that I would not destroy the memo. I do not have a copy at the office. I do elsewhere.

In my conversation with Fred Williams, I asked him why Dahlberg just didn't tell Pat McDonald what to do and the whole issue would be behind us. He said Bill did not have the clout to do that. He said McDonald was very close to Farley and if Bill gave Pat McDonald an order and Farley did not agree with it, the matter could wind up before Ed Addison. I asked well, doesn't Dahlberg have enough clout with Addison to win the argument. Fred said that wasn't the issue. He said Addison did not have enough clout to tell Farley what to do. He said the Southern Board was divided and that Addison did not have enough votes to do something if Farley disagreed and that Farley did not have enough votes if Addison disagreed. He said the Southern Board is at a stalemate and we have to make do the best we can. And, the one thing Dahlberg could not afford to do was raise an issue between Dahlberg and Farley that would require Addison to make a decision because, if push came to shove, Addison was not guaranteed that the Board would support him over Farley. Therefore, no major disagreements were to be brought to Addison.

Bottom line: Dahlberg wants to replace Addison. Dahlberg is not going to make something an issue that will require Addison to decide between Dahlberg and Farley. No one is in control at Southern - - it is a shared responsibility. Farley can do what he likes. Farley lets McDonald do what he likes. And, nobody can stop him.

I shared what Fred told me with Paul Rice and Paul said that was pretty much the truth. He said Addison is working to gain a majority of the Board's support but he does not have it now.

After George retired, Kerry Adams, who knows nothing about nuclear, was named to replace him. Grady told him he was not sure who I would eventually wind up reporting to, but that I was to hire no new people.

I believe that the outcome will be that my job will be greatly reduced including a reduction in pay and I will be asked to report to Fred Williams. Or, I could be asked to resign. I don't know. But, I do know this, I have tried to do a good job and have been prohibited from doing my job by Pat McDonald. I got excellent support from George Head. I have received no support - - except lip service - - from Grady or Dahlberg. Everybody is protecting their own position in the company.

I don't know what will happen. It is my opinion that GPC and Alabama Power Company are in violation of our NRC licenses. McDonald reports to Joe Farley, I don't care what the organization chart says. I have pointed out over and over to management that I was concerned that we were

violating Federal law. But, the answer is time and time again, "We'll show them an organization chart."

Maybe you and I can talk about this on Sunday.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

HEARING

-----X

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

-----X 93-671-01-OLA-3

Wednesday, January 11, 1995
Hearing Room T 3B45
Two White Flint North
11545 Rockville Pike
Rockville, Maryland

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 a.m.

BEFORE:

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

NEAL R. GROSS
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2
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4
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13 On behalf of the Licensee:

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15 ERNEST L. BLAKE, JR., ESQ

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>BOARD</u>
Marvin Hobby	2273	2317	2388	2374	2273
	2274	2321	2392	2378	2275
	2276	2328	2393		2279
	2281	2331			2280
	2288	2334			2281
	2306	2336			2284
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1 as to whether it's a few words or a whole sentence, or
2 anything like that?

3 THE WITNESS: I think it's -- I think it's
4 pretty close to what was written, because I was told
5 basically what to write.

6 CROSS EXAMINATION (Continued)

7 BY MR. WITHROW:

8 Q Maybe I can refresh your recollection on this,
9 Mr. Hobby, by referring to your Department of Labor
10 testimony.

11 Do you want to see this, Michael?

12 You remember testifying in your case, I'm
13 sure, and being examined by Mr. Joiner?

14 A Yes.

15 Q And do you recall this question by Mr. Joiner,
16 "And I believe you testified this morning that you wrote
17 that memo that Mr. Dahlberg signed dated December 27,
18 1988, setting up the Nuclear Operations Contract
19 Administration group, correct?" And you answered, "I
20 did."

21 A Yeah.

22 Q And the next question, "And so you wrote the
23 language about how that group would be interfaced with the
24 SONOPCO project, correct?" And you answered, "I wrote the
25 language, gave it to Mr. Head, who approved it, and sent

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1 it to Mr. Dahlberg, who signed it." Was that your
2 testimony, sir?

3 A I -- you've got it in front of you. I accept
4 that.

5 Q Okay. And that was accurate and truthful
6 testimony at the time you gave it, was it not?

7 A Yes.

8 Q And, Mr. Hobby, if I understand your testimony
9 in the proceeding, it is your position that Mr. McDonald
10 was receiving management direction from Mr. Farley with
11 respect to the operation of Plant Vogtle. Is that
12 correct?

13 A I hate to -- would you -- would you ask that
14 again?

15 Q Sure.

16 CHAIRMAN BLOCH: I missed it, so please do.

17 BY MR. WITHROW:

18 Q Okay. Your position is that Mr. McDonald
19 received management direction from Mr. Farley with respect
20 to the operation of Plant Vogtle. Is that correct?

21 A I would -- I would state it a little
22 differently. I believe that Mr. McDonald was receiving
23 management direction. As Executive Vice President of
24 Georgia Power Company, he was receiving management
25 direction from people other than Mr. Dahlberg.

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II. The Timing Of The Decision To Eliminate Hobby's Job And Who Made That Decision

Mr. Kohn accuses GPC of making a material false statement when George Hairston stated the following:

Fred Williams, after reviewing Mr. Hobby's organization, recommended to his boss, Mr. Dwight Evans, that the position of Mr. Hobby be eliminated because it was unnecessary. Mr. Evans agreed, and on December the 29th, 1989, the proposed elimination of the position was presented to the management council. No one disagreed with Mr. Williams' recommendation.

(Conference Tr. at 19-20). From this statement, Mr. Kohn accuses GPC of misrepresenting the timing of the decision to eliminate Hobby's position and who made that decision. Mr. Kohn also accuses GPC of misleading NRC staff regarding Grady Baker's testimony on the timing of and basis for that decision. (Response at 20-21). Contrary to Mr. Kohn's accusations, GPC made no such misrepresentations or misleading statements.

1. The Timing Of The Decision

Significantly, Mr. Kohn's selective quotation from the Enforcement Conference ignores the description by Williams of how the decision evolved to eliminate Mr. Hobby's position. (Response at 20-23). Mr. Williams' description occurs immediately following Mr. Hairston's statement and makes clear that during the fall of 1989, Williams spoke to Hobby, the entire NOCA group and Dwight Evans regarding the continued need for NOCA. (Conference Tr. at 21-22).

Williams' description of the timing of the recommendation he made to Dwight Evans is consistent with his DOL testimony as well as the testimony of Dwight Evans. (Tr. at 369, 372, 388-89, 411-12, 467-68). Moreover, both Tom Boren and Dwight Evans testified that

the decision to eliminate Hobby's General Manager position was communicated to the Management Council on December 29, 1989. (Tr. at 389-91, 482-83).

Although Dahlberg and Baker repeatedly testified they could not recall the specific date of the Management Council meeting in which the elimination of Hobby's job was discussed, both testified that Hobby was discussed in two separate Management Council meetings, the first in which Hobby's potential for future advancement was discussed and the second when the elimination of Hobby's position was discussed.¹ (Tr. at 312-13, 344, 346-47, 354-55, 482-83, 491-92, 679-80, 701-05, 710).

¹/ In quoting Baker's testimony at page 22 of the Response, Mr. Kohn supplies in brackets the date of November 7, 1989, creating the impression that Baker testified the decision to eliminate Hobby's position was communicated to the Management Council on that date. Baker's entire testimony reveals that Baker had no recollection of the specific date of either Management Council meeting. At page 680 of the DOL hearing transcript, Baker was asked if he remembered the date of the meeting where the announcement that Hobby's job was to be eliminated was made, and Baker testified: "I don't remember the date . . . [p]robably late last year, November or December somewhere around there." At pages 701 and 702, Baker was asked if he knew when the "final formal decision was made to eliminate . . . Hobby's job," and he testified that while he was at the meeting where that decision was announced, "I don't remember the date of that meeting." At page 704, when confronted with Evans' testimony that the elimination decision was announced at a meeting on December 29, Baker again stated: ". . . I've testified several times that I don't remember the date of this meeting" and disagreed with Kohn's attempt to assert that this announcement "happened a lot earlier than that December 29th meeting." Indeed, Baker stated, "I do not have an independent recollection of the date of the meeting, period." There can be no question, after a complete review of Baker's testimony, that he simply did not know when the meeting in which the announcement that Hobby's job was to be eliminated was made. Mr. Kohn's attempt to insert a definite date in connection with Baker's testimony is a mischaracterization of the record.

2. Who Made The Decision

Based upon his accusations regarding the timing of the decision to eliminate Hobby's position, Mr. Kohn accuses GPC of misrepresenting who made that decision. In this regard, the DOL record is abundantly clear that the decision was made by Williams and Evans. (Tr. at 312, 369, 372, 388-89, 411-12, 467-68, 485). Consequently, Mr. Kohn's suggestion that Hairston's statement (that Williams and Evans made the decision to eliminate Hobby's position) is a misrepresentation, is unfounded.

In The Matter Of:

*IN THE MATTER OF MARVIN B. HOBBY v.
GEORGLA POWER COMPANY*

*PREDECISIONAL ENFORCEMENT CONFERENCE
October 4, 1995*

*BROWN REPORTING, INC.
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Word Index included with this Min-U-Script®

ENCLOSURE 2

MR HAIRSTON (cont'd.):

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Page 18

The chronology which I'd like to go through hits the major events covered by the Department of Labor record. These events occurred over five years ago, and a brief review is helpful.

In transferring the Georgia Power nuclear employees to Birmingham in 1988, Mr. Hobby turned down an opportunity to be considered for a position. In late 1988, Mr. Grady Baker of Georgia Power Company, outside the nuclear chain of command for the previous six months, performed an annual evaluation of Mr. Hobby. A copy is included in the handout supplied to you.

Mr. Baker noted that Mr. Hobby's strengths were in the nuclear area. Marvin's knowledge of the - and this is in quotes. "Marvin's knowledge of the national nuclear industry is unsurpassed." The evaluation also noted Mr. Hobby had developmental needs to broaden his knowledge in Georgia Power's general operations. Of course, by this time, the corporate nuclear organization was in Birmingham.

On December the 27th, 1988, only a few weeks after nuclear operations began to report to him, Mr. Bill Dahlberg approved the formation of a Nuclear Operations Contract Administration group. A

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copy of Mr. Dahlberg's memo of that date is included in your package. Marvin Hobby became the general manager of this NOCA group, as it was called. He received a two-level increase in position. He had three employees, two serving as financial analysts and one secretary, reporting to him when the group was first started.

Oglethorpe Power Corporation, as most of you know, is a co-owner of a major portion of Plant Vogtle and Plant Hatch. In addition, Oglethorpe owns a portion of some of the cofired plants on the Georgia system. During late 1988 and into 1989, Georgia Power and Oglethorpe were discussing negotiating the relationship which the planned Southern Nuclear Operating Company would have with the co-owners.

On April the 26th, 1989, Mr. Hobby forwarded a request of Oglethorpe to Fred Williams to explain the reporting structure of Georgia Power Company and how Mr. Joe Farley, an officer of Southern Company in Birmingham, fit into the picture. Mr. Williams provided that explanation on May the 15th, 1989. Copies of the request and the response of Mr. Williams are included in your package. Mr. Hobby claims that Georgia Power

illegally eliminated his position as the results of concerns that he raised in an April the 27th, 1989, memorandum to Fred Williams.

I would like us to review that memo or parts of that memo today because it's important to actually see the statements made in the letter to understand its tone and content.

On page 7 is the concern which is the basis of Mr. Hobby's action against Georgia Power Company. I have an overlay of that, and if you would, I would ask you to read the next-to-the-bottom paragraph, the one that starts with "a significant concern."

In May and June of 1989, Bill Dahlberg, the then president and CEO of Georgia Power Company, was reconsidering the need for Mr. Hobby's NOCA group. He met with Joe Farley and Grady Baker to discuss the ongoing negotiations with Oglethorpe Power. At this meeting, concern was expressed that NOCA was unnecessary. A request was made at that time for the SONOPCO project to employ Mr. Hobby. Mr. Dahlberg concurred with a freeze on the NOCA group hiring any further employees. The need for NOCA was uncertain.

Fred Williams was in charge of contracts

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between the co-owners, including Oglethorpe and Georgia Power at this time. He learned during 1989 that Mr. Hobby's group would begin reporting to him effective January the 1st, 1990. He began a review process to determine how Mr. Hobby's group would fit into his existing organization. What did NOCA do? What was the level of activity? These are some of the questions he began to ask Mr. Hobby and his staff.

Independent of these activities, Georgia Power's management council members met on November the 7th, 1989, to evaluate the performance and future advancement potential of many high-level managers and officers, including Mr. Hobby. Fred Williams was not in attendance, nor was Mr. Pat McDonald, Mr. Grady Baker, who had last reviewed Mr. Hobby in late 1988, was present. So was Mr. Dahlberg.

In terms of performance, three of the reviewers gave Mr. Hobby the lowest possible rating. Four rated him about average, and one person rated him below average. In terms of future potential for advancement, everyone rated him as having no further potential.

Fred Williams, after reviewing

(1) Mr. Hobby's organization, recommended to his boss,
(2) Mr. Dwight Evans, that the position of Mr. Hobby be
(3) eliminated because it was unnecessary. Mr. Evans
(4) agreed, and on December the 29th, 1989, the proposed
(5) elimination of the position was presented to the
(6) management council. No one disagreed with
(7) Mr. Williams' recommendation.

(8) I would like to have Mr. Williams explain
(9) to you the reasons for his recommendation. Fred?

(10) MR. WILLIAMS: Thank you, George.

(11) I think I'll read this statement, and
(12) maybe we can answer questions later. That will make
(13) sure I've covered everything.

(14) From 1984 through the present, I have
(15) been the Georgia Power Company officer responsible
(16) for administration of contracts between Georgia
(17) Power Company and other joint owners of Plants
(18) Vogtle and Hatch. These contracts also include
(19) Cofired Plant Scherer and Cofired Plant Wansley and
(20) a jointly owned transmission system here in the
(21) state of Georgia, so the relationship between the
(22) co-owners in 1989 was much broader than just whether
(23) the co-owners would agree to the formation of the
(24) Southern Nuclear Company and the transfer of
(25) operating license authority to Southern Nuclear.

(1) There were many commercial issues at the time, such
(2) as the agreement between Georgia Power and
(3) Oglethorpe Power which governed Georgia's sale of
(4) partial requirements for electricity to Oglethorpe
(5) and the Municipal Group.

(6) Because of my responsibilities in these
(7) areas and Mr. Hobby's assignments in 1989, I had
(8) contact with Marvin throughout that year, including
(9) negotiations on a draft nuclear managing board
(10) agreement between the co-owners.

(11) Marvin began reporting to me effective
(12) January 1, 1990. Even before that date, I began to
(13) review the need for Marvin's contract administration
(14) group. In my review, I met with Marvin and his
(15) staff to determine what tasks they were performing.
(16) The group consisted at that time of Marvin and two
(17) much lower level positions filled by employees with
(18) an accounting or financial type background and a
(19) secretary.

(20) After talking with Marvin's group for
(21) hours and reviewing the tasks which they were
(22) performing and a November 1989 memo which set out
(23) their activities that I had requested be prepared, I
(24) concluded that there was not a legitimate need for a
(25) separate group within Georgia Power to perform these

(1) tasks. There was no operations contract between
(2) Southern Nuclear and Georgia Power to administer. I
(3) viewed my co-owner responsibilities as including any
(4) such contract. In fact, I am the Chair of the
(5) nuclear managing board of the co-owners today. The
(6) operations contract between Georgia Power and
(7) Southern Nuclear isn't in place even yet, and that
(8) would have been the contract that the NOCA group
(9) would have been administering when it was set up.

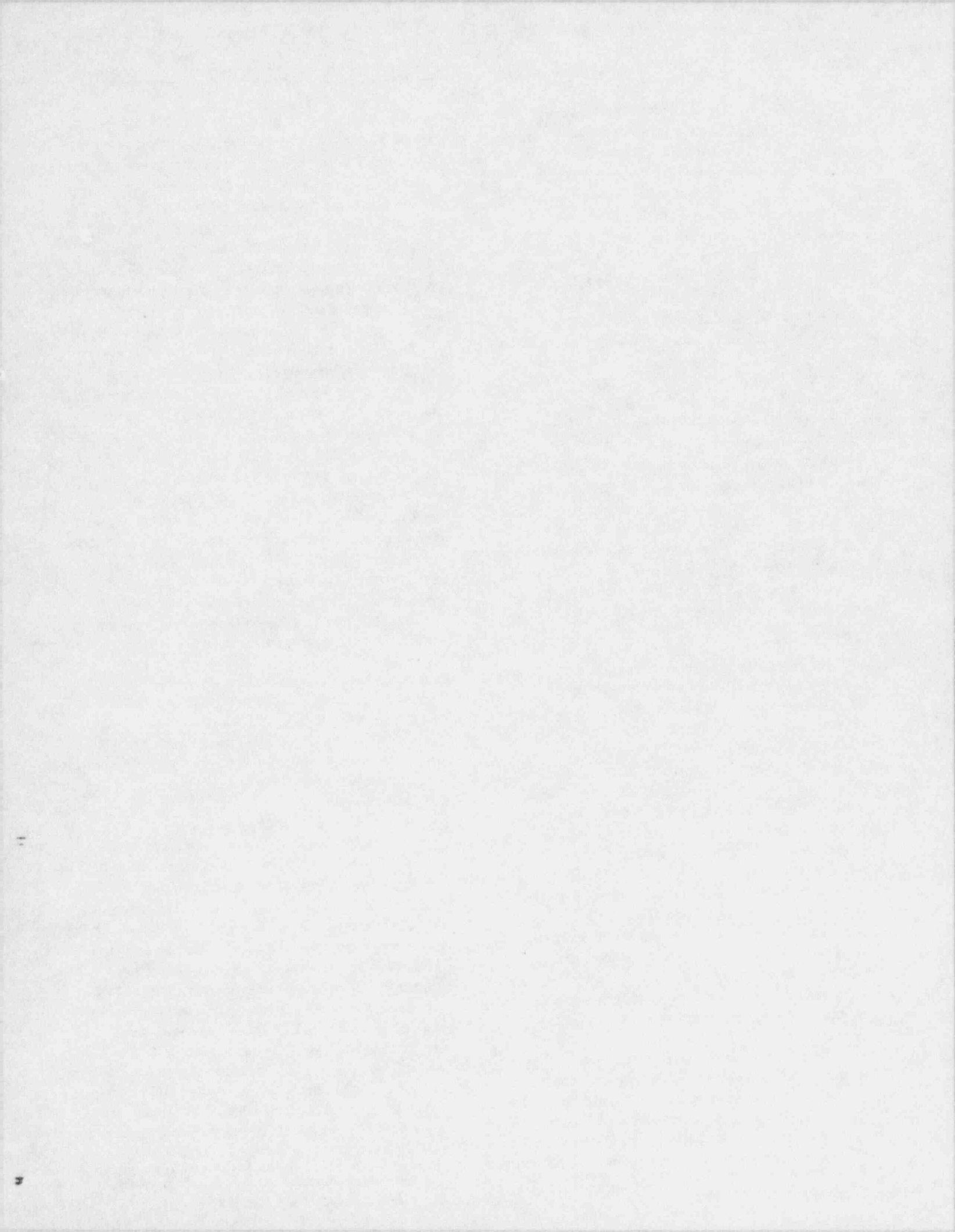
(10) In the fall of 1989, I made my views of
(11) Marvin's group known to Marvin himself and to my
(12) boss, Dwight Evans. In addition, I could not see
(13) any reason in particular at the time we were
(14) downsizing the company for a general manager
(15) position to oversee the group's responsibilities.

(16) In making my decision to absorb the group
(17) into my area and to recommend the elimination of
(18) Marvin's general manager's position, his performance
(19) was not a factor in that deliberation. In fact, I
(20) discussed with Marvin whether he would consider
(21) other job prospects within two levels of his current
(22) position of the 20 and the possibility of
(23) transferring to Georgia Power's nuclear group in
(24) Birmingham if he wanted to stay in the nuclear
(25) area. Marvin's background was in nuclear, and his

(1) best opportunities would be there. I should
(2) mention, too, that at the time, when an employee
(3) took a lower level position, his or her salary was
(4) not automatically cut. It would be red circled and
(5) maintained. He would just move into a different pay
(6) scale at that time, but his current salary would be
(7) maintained.

(8) Marvin was not interested in other
(9) positions within the company outside of nuclear or
(10) in the Southern Nuclear project in Birmingham, so at
(11) that time, we began discussing voluntary
(12) outplacement packages. These packages were not
(13) uncommon for impacted - and that's the word we gave
(14) to employees whose jobs were eliminated at that
(15) time - we had a considerable amount of these -
(16) impacted managers and officers. Although I had
(17) never dealt with negotiating one, Marvin was very
(18) receptive to this idea, and we began to talk
(19) financial figures. When I gave him specific
(20) approved figures, he was dissatisfied and called the
(21) former president of Georgia Power, Mr. Jim Miller.
(22) At that time, I believe Mr. Miller was still on the
(23) board of directors of Georgia Power Company.

(24) It was at that point that Mr. Tom Boren,
(25) our Senior VP of Human Resources, got involved with



BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME II</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Wednesday, October 24, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

I N D E XWITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Marvin B. Hobby	44	219	--	--

EXHIBITS:

	<u>IDENTIFIED</u>	<u>RECEIVED</u>
<u>Complainant's:</u>		
Nos. 1 thru 21	Premarked	10
Nos. 23 thru 25	Premarked	10
Nos. 27 thru 35	Premarked	10
<u>Respondent's:</u>		
Nos. 1 thru 18	Premarked	12
No. 19 - Letter 5/1/89	254	256

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Thomas J. McHenry	279	293	298	--
Alfred W. Dahlberg	302	321	361	--
Dwight H. Evans	363	376	--	--
Fred D. Williams	399	440	--	--
Thomas G. Boren	475	501	508	--
Lee Glenn	509	520	523	--
William R. Evans	525	539	--	--

EXHIBITS:IDENTIFIED RECEIVED

Complainant's:

Nos. 36 & 36-A - Dahlberg Calendar	350	352
Nos. 37 & 37-A - Williams Calendar	460	460

Joint:

No. 1 - Stipulation	398	398
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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
E. P. (Dennis) Wilkinson	544	557	--	--
Joseph M. Farley	564	579	--	--
R. P. McDonald	601	619	--	--
George F. Head	643	658	--	--
H. G. Baker	678	690	705	709

<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Complainant's:		
No. 38 - Wilkinson bio	548	548

1 type things, and in effect the SONOPCO project does that
2 themselves, and it would have been a duplication of that
3 function that they now perform.

4 Q. At the time you issued this memorandum at Tab 2 of
5 Exhibit R-18, when did you expect to receive SEC approval and
6 to incorporate SONOPCO?

7 A. Well, again I thought it would be a matter of
8 months.

9 Q. Going now, Mr. Dahlberg, to a point in time in
10 1989, who was responsible for recommending that the position
11 of general manager of nuclear operations contract
12 administration be eliminated?

13 A. I would think it would have been Mr. Evans or
14 perhaps Mr. Williams.

15 Q. Okay. Do you know the reasons for the decision and
16 recommendation that the position of general manager be
17 eliminated?

18 A. Yes. There was not a function to be performed.
19 There was no contract, and I had determined that the other
20 things that I saw could be performed by that group, that is a
21 monitoring of performance wasn't necessary and that SONOPCO
22 did that themselves.

23 The same thing happens in the fossil and hydro. I
24 don't have, for example, a separate organization that looks
25 at the performance of that group, they do it themselves, and

1 there just wasn't a need for that position because there were
2 no functions to perform.

3 Q. Was a recommendation to eliminate the position of
4 general manager discussed in any of the management council
5 meetings in the latter part of 1989?

6 A. I'm not sure the position itself was discussed. We
7 discussed on several occasions the overall structure of the
8 organization, we looked more at the people that we had in
9 jobs and their performance, their potential and so forth, but
10 I don't think we had specific discussions about elimination
11 of positions.

12 Q. The meeting that you just referenced where
13 particular individuals were discussed and evaluated, was that
14 meeting November 7th of 1989?

15 A. I believe that's correct. It was late in that
16 year.

17 We had had an earlier meeting that had only talked
18 about the senior levels in the organization, about those
19 people and about ourselves. This was our management council
20 group.

21 I think at the meeting you referenced we talked
22 about the entire organizational structure.

23 Q. Do you remember whether or not Mr. Pat McDonald was
24 at that meeting?

25 A. He was not.

1 7th?

2 A. I may have, Mr. Kohn. I really don't know if it
3 was the 7th, 8th, 9th. I didn't know that until I looked at
4 documents coming to this litigation.

5 If you tell me it was the 7th, I'll agree to the
6 7th. It was early November of 1989.

7 Q. And if we told you it was the 17th, you would agree
8 it was the 17th?

9 MR. JOINER: Your Honor, I don't know what the
10 relevance of this is.

11 MR. KOHN: Your Honor, the relevance is that one of
12 our contentions is that the management council -- the date
13 the management council decided to reorganize Mr. Marvin
14 Hobby's job is an essential fact to the case.

15 JUDGE WILLIAMS: Why?

16 MR. KOHN: Because --

17 JUDGE WILLIAMS: I mean there's been some business
18 about it being the 14th, the 17th, that these guys' calendars
19 don't show it, that this man was on vacation, that's all come
20 out in the discovery situation. I mean why does three days
21 matter?

22 MR. KOHN: Well, your Honor --

23 JUDGE WILLIAMS: There was nothing in Mr. Hobby's
24 testimony yesterday which leads me to believe that three or
25 four days is important.

1 because you felt Marvin Hobby had poor performance; isn't
2 that correct?

3 A. That is inaccurate. We did not make a
4 determination to eliminate Mr. Hobby's job at the meeting.

5 Q. And when was that decision made?

6 A. It would have been made in -- as best I recall now
7 in early 1990. I can't tell you precisely.

8 Q. And during this first management council meeting,
9 the one you now contend occurred on the 7th of November, Mr.
10 Hobby was rated as having poor performance -- right? -- that
11 was your opinion of him?

12 A. That's correct.

13 Q. And what did you base your opinion on?

14 A. Just my overall observation about his performance
15 in those jobs that I had some knowledge about.

16 I will say this too, it wasn't a review of Mr.
17 Hobby, it was a review of all those personnel on the
18 organizational structure, and we rated not only the
19 performance, but the potential of that employee to move to
20 other areas of the company, to move up, and we rated all of
21 the officers and general managers of the company, not just
22 Mr. Hobby.

23 Q. And on November 7th you came to the conclusion that
24 by this time Marvin Hobby had poor performance and no
25 possibilities of moving up in the corporate structure; right?

1 A. That's correct.

2 Q. And there was a May 5th meeting that you had with
3 Mr. Farley and Mr. Grady Baker; is that correct?

4 A. I said I had a meeting with them, and I can't be
5 certain of the date, but I will accept that.

6 Q. Okay. Now, did you have a look at your calendar to
7 see if that meeting is recorded in your calendar?

8 A. No, sir.

9 Q. Okay. To this date you have not looked at your
10 calendar?

11 A. No, sir.

12 Q. And I'm going to show you a document turned over in
13 the course of discovery, it's excerpts of your calendar, and
14 can you tell me what the entry is for November 7th?

15 A. No. It's blank on mine.

16 Q. Now --

17 MR. JOINER: Your Honor, this --

18 JUDGE WILLIAMS: What do we have here?

19 MR. JOINER: I don't know exactly what this is, and
20 obviously it doesn't have any entries on it.

21 BY MR. KOHN:

22 Q. Now I'm going to show you another document, and I
23 have it open to the same page, and if you can tell me if
24 that's your calendar.

25 A. Let me make sure I understood what you asked. You

1 general interest.

2 Q. Okay. I'm going to show you a document that was
3 referred to earlier as the second responses to
4 interrogatories, and I ask you to look at interrogatory
5 Answer Number 2 which requests a list of members of the
6 management council.

7 It doesn't list Mr. McDonald as a member of the
8 management council, does it?

9 A. No, it doesn't.

10 Q. So you're telling me that the answer to this
11 interrogatory is incorrect?

12 A. That is correct, that is what I'm telling you.

13 MR. JOINER: Excuse me.

14 Your Honor, may I have just a moment to look at
15 this?

16 JUDGE WILLIAMS: Do you have a copy for me?

17 MR. KOHN: I'm sorry, your Honor (passing
18 document).

19 BY MR. KOHN:

20 Q. Now, during the management council meeting where
21 you knew you were going to be discussing -- Let me rephrase
22 that.

23 Did you know during the management council meeting
24 that you were going to be discussing the elimination of
25 Marvin Hobby's job?

1 A. We did not discuss the elimination of Marvin
2 Hobby's job. I've testified to that about three times
3 already.

4 Q. No time in the management council meeting was the
5 elimination of Marvin Hobby's job or the --

6 Was Marvin Hobby's job, or the elimination of
7 Marvin Hobby's job discussed in a management council meeting?

8 A. No.

9 Q. Ever?

10 A. I don't know if -- you know, since this litigation
11 we've probably talked about it, and we may have had some
12 conversation about it, but at the November the 7th meeting
13 which was the subject of your inquiry we did not discuss
14 elimination of jobs. We discussed the performance of people
15 in the organization.

16 Q. And was there another meeting in December, December
17 29th of the management council?

18 A. I don't know, Mr. Kohn. You have my calendar.

19 As I said before, we meet almost every week. One
20 week we meet for an hour just to talk about things that are
21 going on in the company, one week we meet for roughly three
22 hours on matters of policy, the next week we meet on matters
23 of financial consequence.

24 Occasionally we move away from the building and we
25 discuss personnel, personnel matters, organizational

1 with Mr. Fred Williams?

2 A. I did later in the year. Due to a retirement of an
3 executive I knew that there would be reorganization and Mr.
4 Williams would begin reporting to me at the end of the year,
5 and there would be changes taking place, so that in late 1989
6 after the rate case, probably in the late October-November
7 time frame, we began having discussions as to how we should
8 organize and proceed.

9 Q. And as of January 1, 1990 Mr. Williams would start
10 reporting to you?

11 A. That is correct.

12 Q. Okay. So that's the reason you were having these
13 discussions in late 1989 about the contract administration
14 group?

15 A. Yes.

16 Q. What was Mr. Williams' recommendation regarding the
17 contract administration group, and in particular Mr. Hobby's
18 position?

19 A. He concurred with my feeling that we did not need a
20 high level position, and that was a position that could be
21 eliminated.

22 Q. What were his reasons for making that
23 recommendation to you as you understood?

24 A. That in proceeding through the 1989 rate case it
25 was obvious that we were not getting information timely to

1 McDonald's testimony in any of your meetings with Mr.
2 Williams or Mr. Boren?

3 A. No, there were not.

4 Q. Was that proceeding, or Mr. Hobby's involvement in
5 that proceeding a factor in the elimination of his position?

6 A. No, it was not.

7 Q. Now, did you relay the decision, or relate the fact
8 that a decision had been made about Mr. Hobby's position to
9 the management council?

10 A. Yes, I did. I felt the need to eliminate three
11 positions in my organization, two vice presidents and Mr.
12 Hobby's position, and I related that information that I
13 planned to do that to the management council.

14 Q. And do you recall when that management council
15 meeting was?

16 A. It was in late 1989, I believe December of 1989, or
17 possibly early January of 1990.

18 Q. All right. And was there any formal vote taken by
19 the management council on this decision, or was this just
20 being provided for information?

21 A. It was provided for information.

22 Q. Was there any discussion in that management council
23 meeting about this April 27th memo?

24 A. No.

25 Q. Was there any discussion about the subjects that

1 Q. But isn't it true that it was your understanding
2 that Mr. Hobby had contacted Mr. Williams about an early out
3 package and that's what initiated the conversations between
4 you and Mr. Williams to restructure the nuclear operations
5 contract administration?

6 A. That was discussed in one of our conversations. I
7 don't recall if it was the first conversation or not, but
8 that was discussed in one of the conversations.

9 Q. Could you just read into the record from Line 11 to
10 Line 23 on Page 84 of your deposition?

11 A. Line 11? Line 11 is an answer:

12 "November of '89 is when we mentioned that we would
13 begin restructuring to do some changes in the company, and
14 when we restructure how do we need to be organized. That was
15 the tone of the overall conversation."

16 Q. Thank you. Where did you stop reading?

17 A. (Indicates.)

18 Q. Continue to read all the way down to the end of the
19 page.

20 A. The question: "Okay. Was it at your request that
21 Mr. Williams was going to engage in a fact-finding mission to
22 determine whether the position was needed?"

23 Answer: "It was my understanding Mr. Hobby had
24 contacted Mr. Williams about an early out package, and that's
25 what initiated the conversation."

1 Q. At the time of the reorganization of SONOPCO, the
2 concept of creating the nuclear operations contract
3 administration was so that everything could be put in place
4 in anticipation of incorporation, and the idea was that the
5 nuclear operations contract administration group would be
6 fully functional as soon as possible?

7 A. That was my understanding, but I was at Southern
8 Company Services at that time and was not involved in any of
9 those discussions.

10 Q. And you began speaking, or when did your
11 conversations about eliminating Mr. Hobby's job begin with
12 Mr. Williams?

13 A. My discussions I believe began in November of 1989
14 about eliminating the position. I believe it was in that
15 time frame. I know it was after the 1989 rate case which
16 ended in October.

17 Q. So the discussions began after the rate case ended.

18 A. Yes.

19 Q. And could it have been in December?

20 A. It could have.

21 Q. After Mr. Hobby asked for an outpackage?

22 A. I believe that it was before, but I'm not -- you
23 know, I have to go back and look at my calendar and look at
24 other things.

25 I don't recall specific dates, but the time frame

1 was November-December time frame.

2 Q. See if this helps refresh your recollection as
3 to whether it was November or December, if you would read
4 your deposition on Page 43, the last question and your
5 response.

6 A. Question: "When did you start discussing with Mr.
7 Williams the fact that Mr. Hobby's position might not be
8 needed?"

9 Answer: "I remember correctly it was in December
10 of '89, in the several weeks and days leading up to Mr.
11 Williams, to the reorganization that took place."

12 A. And that reorganization took place on December 29th
13 during a management council meeting?

14 A. I believe during the deposition you showed me a
15 calendar that had some information on it.

16 Q. And you had an independent recollection of the 29th
17 because you were on vacation and you were specifically called
18 into that meeting?

19 A. I recall that it was in the last week of December,
20 I believe you showed me a calendar and I agreed that the 29th
21 was the date, but I could recall it was the last week of
22 December.

23 Q. Well, in your deposition didn't the conversation go
24 more to the fact that "Do you know what day it was in
25 December?" and didn't you say "Well, I believe it was on the

1 29th, because I was on vacation and I had to be called in
2 specifically to the meeting"? Did you provide me that
3 information?

4 A. The information I provided you was that the meeting
5 was scheduled for the last week of December, it was scheduled
6 two or three weeks in advance, and it was scheduled on the
7 week that I was to take vacation.

8 I was not called back in from vacation, I was
9 actually on vacation the day prior to that, and that's why I
10 recall it was the last week of December.

11 I couldn't recall if I remembered correctly whether
12 it was the 27th, 28th or 29th, but I knew it was one of those
13 three dates.

14 Q. And then I showed you Mr. Dahlberg's calendar --

15 A. And that's when I remembered it when you showed it
16 to me, that's when I remembered it was the 29th.

17 Q. And when Mr. Williams told you that Marvin Hobby
18 was looking for an outpackage, or when you had other
19 conversations with Mr. Williams about reorganizing the
20 nuclear operations contract administration, you were also
21 under the impression that there were pending job offers for
22 Mr. Hobby at the SONOPCO project?

23 A. I was under the impression that he had potential
24 jobs at SONOPCO, yes. That was my understanding. I had not
25 been directly involved.

1 staff to consider the information that was placed in this
2 memo?

3 A. Yes, sir, they came to my office and we discussed
4 it.

5 Q. And can you tell the court generally what was
6 discussed in that meeting?

7 A. In that meeting the staff -- and Mr. Hobby was late
8 as he said coming to the meeting -- defended essentially, I
9 really pressed them on "Why are you needed? If we've got
10 accountants already talking, and budget people already
11 talking to each other between here and SONOPCO, and SONOPCO
12 has staff to do this, tell me the real reason," and I really
13 pressed as I said playing the devil's advocate as to "Why are
14 you needed? I'm not here to eliminate you, I just need to
15 know, I need to get in my mind fixed why this function is
16 necessary and would be necessary with SONOPCO set up," and we
17 went through these various areas explaining why they thought
18 they were necessary.

19 Q. At what point did you make a formal recommendation
20 to your superiors about the elimination of Mr. Hobby's
21 position?

22 A. I would guess the formal recommendation, though I
23 had had discussions before and I had given my thoughts on the
24 idea, was probably -- well, they didn't report to me until
25 January 1st, and I gave my formal recommendation then,

1 actually went through with the process, but prior to that in
2 December and early November I was already informing Mr. Evans
3 that I did not see the need for a high level manager, or did
4 I see the need for a separate organization to exist to
5 administer a contract if we ever got a contract.

6 Q. Did Mr. Evans agree or disagree with your
7 conclusion?

8 A. He agreed with it.

9 Q. In making your decision about the elimination of
10 Mr. Hobby's position, did you ever discuss the need for the
11 contract administration group or Mr. Hobby's position with
12 Mr. McDonald?

13 A. No, sir.

14 Q. Did you ever discuss those issues with Mr. Farley?

15 A. No, sir.

16 Q. Did Mr. McDonald or Mr. Farley ever state to you
17 that they wanted to see Mr. Hobby's position eliminated?

18 A. No, sir.

19 Q. Did they ever tell you that they wanted to see Mr.
20 Hobby fired?

21 A. No, sir.

22 Q. Did they ever say that they wanted to see him leave
23 the company?

24 A. No, sir.

25 Q. Did they ever express any opinion to you on his

1 yes.

2 Q. And they were reporting to Mr. Adams until the
3 management council reorganized and instructed you on the
4 first of 1990, the beginning of 1990 that Mr. Hobby would
5 start reporting to you at that point?

6 A. I don't know the management council. Mr. Evans
7 called and said that he and Mr. Adams had met and talked to
8 Mr. Dahlberg and that beginning January 1st that the nuclear
9 operating contract administration group would report directly
10 to me.

11 Q. And at the time you got that information, you had
12 already determined that you were going to eliminate Marvin
13 Hobby's job the day he started to report to you?

14 A. I think I had already told him that that was my
15 leaning, yes, and going to be my recommendation. He was
16 aware of that.

17 Q. Okay. So it was just a matter of needing to
18 formally transfer Mr. Hobby to you so you personally could
19 eliminate the job? Why didn't Mr. Adams just eliminate it?

20 A. I was not a party to that decision. I had already
21 been making my recommendations as to what I thought was
22 needed.

23 I think Mr. Baker before his retirement and Mr.
24 Adams now in a discussion had all been saying at some point
25 down the road that this function, the more information that

1 we were finding in these fact-finding missions and what was
2 going on in the negotiations more properly belonged in the
3 bulk power markets organization and not where it was over in
4 the power generation area, so I think we had all been
5 anticipating this, and Mr. Hobby knew that I thought at some
6 point, and I told him that, and he believed that too, that he
7 would be reporting to me, or the nuclear operating contract
8 administration section would, yes.

9 Q. And you were playing an informal role about what
10 you were going to do with nuclear operations contract
11 administration group, and you were not advising Mr. Hobby of
12 what you were going to do during --

13 A. I was being very candid with Mr. Hobby. I wasn't
14 pulling any punches, I was telling him what I believed, and I
15 think that was the only fair thing to do, that I wasn't going
16 to have this, this is what I believed, and I was going to let
17 him know about it.

18 That's how I asked him about "Would you be
19 interested in a SONOPCO job or some other job?"

20 I might point out that when it moved over, it's a
21 20 Level job now, but when it moved over it was no longer.
22 I think probably the 20 came because as you mentioned
23 yesterday in your own direct testimony that part of that was
24 the fact that it was an assistant to a senior VP.

25 I am not a senior VP, so when it moved over there

1 Q. Did you do anything, Mr. Boren, to ensure that Mr.
2 Hobby received support in performing the duties assigned to
3 him in this memorandum?

4 A. Yes, sir, I sure did. About this time I went down
5 and met with one of our vice presidents, Rick Pershing.

6 Mr. Hobby was in the process of trying to hire some
7 additional staff, and I approached Rick to make sure that we
8 gave Marvin one of the best people we had, because I had
9 concerns that Marvin was not the kind of guy to roll up his
10 sleeves and get involved in it, and I wanted to make sure we
11 did everything we could to give him the kind of person that
12 could do it that could get in there and get the job done.

13 And Rick responded very positively with that. He
14 had recommended Gerald Johnson, and that's who Mr. Hobby
15 hired.

16 Q. Let me direct your attention now, Mr. Boren, to the
17 management council meeting on November 7th, 1989. Did you
18 attend that meeting?

19 A. I sure did.

20 Q. Who else attended that meeting?

21 A. The other three senior vice presidents, Carey
22 Adams, Wayne Dahlke, Gene Hodges;

23 Three of the four executives, Warren Jobe, Dwight
24 Evans, John Hendrick;

25 Bill Dahlberg attended, as well as the company's

1 industrial psychologist consultant that we used, Dr. Jim
2 Tanner.

3 Q. What was the purpose of the November 7th management
4 council meeting, Mr. Boren?

5 A. The purpose was several things, but the primary
6 purpose was to look at leadership.

7 The Southern system, of which Georgia Power is a
8 big part, was going through the process of looking at how do
9 we ensure that we have the right number and quantity and type
10 of leaders in the pipeline so to speak for the next decade,
11 and one of the challenges they had issued to Mr. Dahlberg was
12 to look at people that we had coming up through the ranks and
13 make sure we identified those leaders, looked at their
14 potential and were basically trying to develop that.

15 Also at that same time Mr. Dahlberg was doing some
16 team building with us as well.

17 Q. Mr. Boren, what were the performance and potential
18 evaluations of Mr. Hobby?

19 A. Let me describe the process we went through on that
20 if you would.

21 Each of us stood up before the rest of the members
22 of the management council, and we would list the individuals
23 that reported directly to us, and then before anybody else
24 commented on them we would sit down and identify what we
25 thought their performance was from a rating of zero to four,

1 referring to, your Honor.

2 THE WITNESS: I can still tell you from memory.

3 JUDGE WILLIAMS: A witness is entitled to testify
4 based on his own personal memorandums or notes. I mean
5 you're entitled to look at it if you want to look at it.

6 If he's using something to help him recall, that's
7 permissible except that you do have the right to look at what
8 he's using to help him recall.

9 MR. KOHN: All right, sir.

10 JUDGE WILLIAMS: Continue.

11 BY MR. JOINER:

12 Q. I believe, Mr. Boren, my pending question was
13 whether you had an occasion to discuss the decision to
14 eliminate the position of general manager of nuclear
15 operations contract administration with Fred Williams and
16 Dwight Evans in the fall of 1989.

17 A. Yes, sir.

18 Q. Who was responsible for making that decision, Mr.
19 Boren?

20 A. Mr. Williams was.

21 Q. And what were the reasons as you understood them
22 for the decision to eliminate the position?

23 A. When we established the position back at the end of
24 1988 -- I believe it was the end of '88, it may have been the
25 beginning -- we did that on the assumption that we would have

1 Mr. Williams was willing to keep Mr. Hobby on board as an
2 employee and assign him miscellaneous projects as he had them
3 for him to do between then and the end of September, so Mr.
4 Hobby was getting basically nine months' pay plus the year's
5 pay spread over four years, plus the benefits. That's the
6 kind of package that we got down to then.

7 Q. And how did that package compare with outplacement
8 proposals that had been made to other similarly situated
9 employees?

10 A. Very, very favorable.

11 Q. And what was Mr. Hobby's reaction to that proposal?

12 A. Again, he rejected it.

13 Q. When Mr. Hobby became an impacted employee, how
14 many other employees of the company were also on the impacted
15 employee list?

16 A. During the February to April time period of this
17 year there were approximately thirteen people on the impacted
18 employee list, and during that period of time five people
19 were placed, five people were outplaced outside the company,
20 and there are three still people on that impacted list.

21 Q. Mr. Boren, did you attend the December 29th, 1989
22 management council meeting?

23 A. I did.

24 Q. Was the decision to eliminate the position of
25 general manager of nuclear contract administration discussed

1 at that management council meeting?

2 A. Let me respond a little bit about that meeting.
3 The focus of that meeting, the thrust of that meeting was to
4 address, number one, this division reorganization that we
5 were talking about, over 5,200 employees that we were dealing
6 with and what's happening with those staffs.

7 In addition to that, we also talked a lot about our
8 union relationships and the fact that I needed a vice
9 president of labor relations, and we had never had one of
10 those before, to come in and help rebuild our relationship
11 with the union.

12 There were a number of other items that we had
13 previously asked people to look at.

14 The general manager position that Mr. Hobby had
15 was on that list, and as I remember it was briefly discussed,
16 but there was no extended discussion on it.

17 Q. And who was it that brought that information to the
18 attention of the management council if you remember?

19 A. Mr. Evans would have briefly discussed it.

20 Q. Okay. Let me get you to refer to the book of
21 documents again.

22 If you would look under Tab 3, that's an April 27th
23 memorandum from Mr. Hobby to Mr. Fred Williams. Have you
24 ever seen that document, Mr. Boren?

25 A. Only after Mr. Hobby left the company did I see

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME III</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Thursday, October 25, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

1 reporting to me.

2 Q. Okay. If you would, also explain how your duties
3 changed during the period of time that you held the position
4 of senior executive vice president.

5 A. Well, I had various operating functions of the
6 company reporting to me during this period of time. I had
7 the division operations, the nuclear operations, nuclear
8 construction, generating plant construction reporting to me
9 at various times while I was the senior executive vice
10 president also.

11 Q. When did you relinquish control over the nuclear
12 operations area?

13 A. I don't remember the date, but it was the date that
14 Pat McDonald was elected executive vice president of Georgia
15 Power Company.

16 Q. Okay. Mr. Baker, were you involved in the decision
17 to eliminate the position of general manager of nuclear
18 operations contract administration?

19 A. Not directly involved in the decision to eliminate
20 it. It was reviewed with the management council, and I was
21 involved in that review and I concurred at that time.

22 Q. Who had the primary responsibility for that
23 decision?

24 A. I didn't inquire as to who made that decision at
25 that time. I think Fred Williams or someone else had the

1 responsibility for that operation at that time.

2 Q. Okay. You mentioned that this decision or
3 recommendation was discussed in a management council meeting.
4 Do you remember when that meeting was?

5 A. I don't remember the date. It was a management
6 council meeting we held at Evergreen Conference Center in
7 Stone Mountain.

8 Q. Late in --

9 A. Probably late last year, November or December or
10 somewhere around there.

11 Q. Do you remember what was discussed about the
12 elimination of the position?

13 A. We discussed a number of positions at that time,
14 and the major issue was whether or not the individual
15 involved could contribute to the company, as whether they had
16 the abilities and management abilities that we needed and
17 required, and those were the issues that were discussed.

18 Q. Okay. When the recommendation to eliminate the
19 position of general manager/nuclear operations contract
20 administration was discussed, were there any discussions
21 about Mr. Hobby's April 27th, 1989 memorandum to Fred
22 Williams?

23 A. No.

24 Q. Was there any discussion about Mr. Hobby's
25 involvement in the Fuchko/Yunker proceedings before the

1 A. I think I testified earlier that the reason Mr.
2 Hobby was put in that job was because I had Mr. Hobby and I
3 didn't have anything else to do with him, and that was an
4 experiment to see if in fact Mr. Hobby could produce
5 something that was of value to the company.

6 Q. Now, is there any reason you would know why Mr.
7 Head would have the belief that the job was permanent? He
8 believed that the position was created with the understanding
9 it would be a permanent position.

10 A. There was nothing -- you know, there's no
11 documentation that this was a temporary job or anything of
12 that sort, but I don't take the -- I don't have the
13 understanding that every time you create a job at Georgia
14 Power Company it's eternal.

15 It's my management opinion that you should be as
16 quick to eliminate jobs as you are to make jobs. Otherwise,
17 your administrative staff grows enormously and your expenses
18 grow enormously with them.

19 Q. But you didn't eliminate Mr. Hobby's job, did you?

20 A. No.

21 Q. So --

22 A. But some of the people who did might have been
23 influenced by me, their philosophy might have been some of my
24 philosophy. I hope that's the case.

25 Q. Okay. Now, do you know when the final formal

1 decision was made to eliminate Mr. Hobby's job?

2 A. No.

3 Q. You don't know?

4 A. No.

5 Q. You weren't at a meeting where that occurred?

6 A. I was at the meeting at Evergreen when the
7 situation was reviewed, as I just testified a few minutes
8 ago, but I don't remember the date of the meeting or anything
9 that -- I don't know of anything that occurred after that
10 meeting, personally directly anything that occurred after
11 that meeting.

12 Q. Now, at your deposition you were shown a document
13 that had a date on it 11/17/89; correct?

14 A. Uh-huh.

15 Q. And from those notes you said those notes at least
16 came from the meeting where that occurred; right?

17 A. Yes.

18 Q. So if you assume that the document was created on
19 the 17th then that was the date of the management council
20 meeting?

21 A. I would assume that's the case.

22 Q. So it was about that time frame. Now, there's been
23 some later testimony saying that that meeting occurred on the
24 7th of November. Do you know if it occurred on the 7th or
25 the 17th?

1 A. I've testified several times that I don't remember
2 the date of the meeting.

3 Q. All right. Now, was it your understanding that the
4 decision made in that management council meeting was the
5 final formal decision to remove Marvin Hobby's job?

6 A. These things are not -- you know, there is no
7 procedure, there is no written documented procedure that says
8 how these things will be handled.

9 They're handled on a more informal basis than your
10 questions would seem to indicate that you believe.

11 We do not have a procedure that says that this
12 number of people will meet and talk and agree, and this
13 percentage will agree before this thing is done.

14 We agreed that this position as well as a number of
15 others were not contributing materially to the company and
16 that they should be eliminated.

17 Now, the people who were directly over these
18 particular positions, all of them, were the ones who had a
19 responsibility for implementing the decision. They brought
20 the thing to us for our concurrence and agreement; if we
21 agreed, then they implemented it.

22 Q. Now, it was your understanding, or it's my
23 understanding from your deposition that at this management
24 council meeting there was the final formal decision to
25 eliminate Marvin Hobby's job was made at that management

1 council meeting.

2 A. To the extent there was nobody higher to go to, you
3 know, that's the case.

4 Q. So it's your testimony that on the date of that
5 management council meeting Marvin Hobby was eliminated from
6 Georgia Power Company, the final decision?

7 A. Not eliminated. We concurred with a recommendation
8 that had been made, yes, and that was the final concurrence.
9 There was nobody else to get concurrence from, because all
10 the senior officers of the company were there.

11 Q. Now, Mr. Dwight Evans testified earlier that his
12 recollection of it, and that he had a specific recollection,
13 was that the decision was made much later on December 29th,
14 1990.

15 A. I have no idea what Mr. Evans has in mind.

16 Q. So it's your understanding that happened a lot
17 earlier than that December 29th meeting?

18 A. NO. I've testified several times that I don't
19 remember the date of this meeting.

20 Q. But the notes --

21 A. But, you know, both counsel and you have showed me
22 things, and you've asked me if this makes sense, and I have
23 agreed with you that it does make sense, but I do not have an
24 independent recollection of the date of the meeting, period.

25 Q. And it's your recollection that on the management

1 council meeting the elimination of Marvin Hobby's job was an
2 agenda item?

3 A. There was an agenda item to consider a number of
4 jobs, I believe, and his was one of those on the list to be
5 considered.

6 Q. So it had already been determined by that
7 management council meeting that there was no place in Georgia
8 Power for Marvin Hobby?

9 A. I believe that's it.

10 JUDGE WILLIAMS: Wait a minute. Let me clarify
11 something here.

12 The questions and the testimony relate to
13 eliminating the job. You're asking not eliminating the job,
14 but eliminating Mr. Hobby. I mean I'm confused. Which was
15 discussed and which decisions were made?

16 THE WITNESS: As I recall, your Honor, the decision
17 was that Mr. Hobby could not make a significant contribution
18 to Georgia Power Company, and that we would separate Mr.
19 Hobby.

20 JUDGE WILLIAMS: All right.

21 MR. KOHN: I have no further questions, your Honor.

22 JUDGE WILLIAMS: Any redirect?

23 REDIRECT EXAMINATION

24 BY MR. JOINER:

25 Q. Let me see if I can get a little clarification

1 independent recollection of separate meetings, or is it all
2 just -- it could be one meeting?

3 A. I'm sure it was discussed at two meetings, you
4 know, and that's all I have any recollection on.

5 I'm sorry, you know, that my answers are not useful
6 to you, but I am retired and just, you know, other than the
7 fact that you subpoenaed me it's not a matter of a lot of
8 interest and I have not tried to remember it.

9 Q. Mr. Baker, I didn't subpoena you. Did someone
10 else?

11 JUDGE WILLIAMS: That's academic.

12 MR. KOHN: Okay.

13 BY MR. KOHN:

14 Q. Now, Mr. Baker, I'm a little confused from the
15 testimony you've been giving, and it's my understanding at
16 your deposition that it's your testimony that Mr. Williams
17 placed on the agenda of the management council meeting the
18 termination of Mr. Hobby's job from Georgia Power Company.

19 A. You know, that may -- You know, like I said, I
20 don't remember.

21 I know -- you know, I am testifying beyond any
22 shadow of a doubt that Marvin was discharged from Georgia
23 Power Company because he didn't have the ability to make any
24 significant contribution to Georgia Power Company, and that
25 is the only reason he was discharged. That is my testimony.

III. Mr. Hobby's Role Was Ill-Defined And There Was No Job Description

Mr. Kohn characterizes Williams' statements at the Enforcement Conference concerning Hobby's role and responsibilities as being misrepresentations. Williams' complete statement at the Enforcement Conference on the pages excerpted by Mr. Kohn, in response to a question from Ms. Watson, was as follows:

Sure. As far as this particular memo, I didn't tell him not to write any memo. What I explained to him was, when he brought me the memo and I read it, it was replete with errors. It was not what I had asked him to bring me, in the first place. I was trying to get an idea of just what they thought their role was going to be. They're the ones that created this job. They're the ones that were pushing and saying they were having problems getting people to cooperate with them. I said, what are your defined responsibilities? All we had was a one-sheet, Bill Dahlberg, essentially, memo saying, we're creating NOCA. So we asked him to say, all right Mr. Hobby, tell me what you think your functions are. Bring those to me and let me understand what you think your role is going to be because I think your role already exists, and so he was putting that together.

Instead, what he brought me was this, and he starts off with the first sentence in here, there is clearly no defined person responsible acting for the agent and joint owners. I had been doing that since 1984. I had been acting as agent for the joint owners and all the joint-owned facilities, so that's the first line in the memo.

He goes on to say it's his understanding, when we negotiate a new contract with GPC and SONOPCO, that he would be the one negotiating that and act as their agent. That was not going to happen, either. I had been the lead negotiator negotiating Southern Nuclear and all these other contract changes we've been talking about since early '88, a year before, so here he was in an ill-defined role that really did not have a definitive job description.

Other people were continuing to meet Georgia Power employees, whether they were in Birmingham now in the Southern Nuclear project or still in Atlanta, meeting, talking about budget, exchange of information, accounting information, GPC's memos. He was getting concerned about that.

That was what I was telling him. Marvin, there's not a defined role yet. These people, even in their memos, mentioned what do you think Mr. Hobby's position and his group should be in this? So they were even asking as to what was the purpose for this.

. . . .

(Conference Tr. at 44-46).

As the above-quoted statement shows, Williams was describing his thought processes and reactions to Hobby's April 27, 1989 memo.² Thus, Williams was describing the inaccuracies contained in Hobby's memo in relation to what Hobby's role was at that time. As made clear in his statement, it was Williams' view that Hobby's position was, as of April 27, 1989, ill-defined and with no definitive job description.

Kohn challenges two aspects of Williams' statement as misrepresentations: 1) that Hobby's position had no "definitive job description"; and 2) that Hobby's role was "ill-defined." Although Mr. Kohn has taken Williams' words out of context, both points are well-supported by the DOL record.

1. No Definitive Job Description

Contrary to Mr. Kohn's assertion, in April 27, 1989 there was no definitive job description for Mr. Hobby's position. Mr. Kohn supports his assertion by pointing to the

^{2/} Ms. Watson's question was:

In the Secretary of Labor's decision, he states that Mr. Williams admitted that he had counseled Mr. Hobby about writing memos such as the April 27th memo, and I'm just wondering if you have some comment about whether or not you told him not to write such memos or what your comments were in that regard.

(Conference Tr. at 44).

Position Questionnaire Hobby drafted. However, the Position Questionnaire was not, even in Hobby's view, a job description. Hobby testified that the Position Questionnaire "is what you use to determine the [pay] level in the company, yes, sir." (Tr. at 115-16; see CX 13). In addition, while the Position Questionnaire listed Hobby's job goals, a review of that document shows that those goals for Hobby's position centered on administering a contract between GPC and SONOPCO and being the liaison between two separate corporations regarding GPC's nuclear plants. (See CX 13). Of course, in April of 1989, there was no contract to administer and no separate corporation to liaison with, so that the Position Questionnaire had no real application to what Hobby's job or role was at that time.

The issue is not whether Hobby's job was ever described as it was theoretically envisioned. To Williams, the issue was whether there was anything that described Hobby's role as it had actually evolved given that SONOPCO had not been incorporated and that there was no contract between GPC and SONOPCO. Thus, as Williams explained at the Enforcement Conference, he was trying to get Hobby's assistance in determining what Hobby's role was and perhaps should be. In that regard, Williams was explaining that there was no documentation that assisted him. While Mr. Kohn does not show that Williams even knew about the Position Questionnaire at the time he was having these discussions with Hobby,³ the existence of the Position Questionnaire does not make Williams' point any less

³/ As Hobby explained at the DOL hearing, he worked with the personnel and salary administration departments at GPC in creating the Position Questionnaire and then provided it to George Head for approval. (Tr. at 115-16, 117). Hobby never testified that he subsequently showed the Position Questionnaire to Williams even when Williams was asking for information on Hobby's true role. Mr. Kohn claims that Williams was present when the Position Questionnaire was introduced as an exhibit in the DOL hearing, but even if that is
(continued...)

valid or add any clarification on what Hobby's real role in April of 1989 was or should be.

(See Tr. 406-411, 414-15, 425-27, 441-47, 451, 467-69).

³(...continued)

true, Williams' statement at the Enforcement Conference related to his conversations with Hobby in the April, 1989 time frame and to Williams' knowledge at that time.

2. Hobby's Role Was Ill-Defined

There is no doubt when NOCA was first created, contemporaneously with the creation of SONOPCO, there was a pretty good idea what the role of NOCA and Hobby's job was expected to be. However, by April of 1989, SONOPCO's incorporation had been delayed, there was no contract to be administered, SONOPCO was a project and in effect a division of GPC, and other organizations within GPC were doing the things that NOCA was envisioned to do. This was the point Williams was making at the Enforcement Conference, and it is supported by the DOL testimony of Dahlberg, Baker, Joe Farley, Pat McDonald, Evans, Williams and Boren. (Tr. at 305, 307-08, 311-13, 315-17, 330-32, 368-70, 387-88, 403, 406-12, 415, 425-27, 441-44, 446, 452-53, 467-68, 485-86, 570-71, 587-88, 597-98, 605, 609, 682). Even Hobby admitted that staffing was delayed while it was determined how the NOCA/SONOPCO interface was going to be established. (Tr. at 119-21, 161). Likewise, George Head and Don Proctor testified that, without a contract between SONOPCO and GPC there was nothing for NOCA to do, and that NOCA essentially duplicated the functions being performed by the SONOPCO project. (Tr. at 645, 784). Of course, Judge Williams also found that, as time progressed, Hobby's role was essentially ill-defined. (See RDO at 43-44).

In The Matter Of:

*IN THE MATTER OF MARVIN B. HOBBY v.
GEORGIA POWER COMPANY*

*PREDECISIONAL ENFORCEMENT CONFERENCE
October 4, 1995*

*BROWN REPORTING, INC.
ATLANTA, AUGUSTA, CARROLLTON, ROME
1100 SPRING STREET
SUITE 750
ATLANTA, GA USA 30309
(404) 876-8979 or (800) 637-0293*

Original File 1004bobb.asc. 52 Pages
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Word Index included with this Min-U-Script®

ENCLOSURE 2

(1) perfected for appeal to the 11th Circuit, and that
(2) has taken over a year. I don't know the exact time
(3) frame. So there is some time involved in perfecting
(4) the appeal.

(5) MR. HAIRSTON: And we're probably looking
(6) at four months for the ASLB's, inside probably a
(7) minimum of three to four months.

(8) MR. REYES: Linda?

(9) MS. WATSON: In the Secretary of Labor's
(10) decision, he states that Mr. Williams admitted that
(11) he had counseled Mr. Hobby about writing memos such
(12) as the April 27th memo, and I'm just wondering if
(13) you have some comment about whether or not you told
(14) him not to write such memos or what your comments
(15) were in that regard.

(16) MR. WILLIAMS: Sure. As far as this
(17) particular memo, I didn't tell him not to write any
(18) memo. What I explained to him was, when he brought
(19) me the memo and I read it, it was replete with
(20) errors. It was not what I had asked him to bring to
(21) me, in the first place. I was trying to get an idea
(22) of just what they thought their role was going to
(23) be. They're the ones that created this job.
(24) They're the ones that were pushing it and saying
(25) they were having problems getting people to

(1) definitive job description.

(2) Other people were continuing to meet
(3) Georgia Power employees, whether they were in
(4) Birmingham now in the Southern Nuclear project or
(5) still in Atlanta, meeting, talking about budget,
(6) exchange of information, accounting information,
(7) GC's memos. He was getting concerned about that.

(8) That was what I was telling him, Marvin,
(9) there's not a defined role yet. These people, even
(10) in their memos, mentioned, what do you think
(11) Mr. Hobby's position and his group should be in
(12) this? So they were even asking as to what was the
(13) purpose for this.

(14) As far as the regulatory issue where he
(15) said, I hear at all these different levels, well,
(16) I'm an officer of the company, and I haven't heard
(17) anybody say, we don't think Pat McDonald reports to
(18) Bill Dahlberg. He says he hears that. I said,
(19) Marvin, it's just not the case. He's an officer of
(20) Georgia Power and reports to Bill Dahlberg. The
(21) management council of the board of directors
(22) approved the budget procedures, and also, it's
(23) working the way it is. Well, I hear Oglethorpe says
(24) that, Marvin, yesterday, you asked me about that.
(25) I gave him an organizational chart. I said what

(1) cooperate with them. I said, what are your defined
(2) responsibilities? All we had was a one-sheet, Bill
(3) Dahlberg, essentially, memo saying, we're creating
(4) NOCA. So we asked him to say, all right, Mr. Hobby,
(5) tell me what you think your functions are. Bring
(6) those to me and let me understand what you think
(7) your role is going to be because I think your role
(8) already exists, and so he was putting that
(9) together.

(10) Instead, what he brought me was this, and
(11) he starts off with the first sentence in here, there
(12) is clearly no defined person responsible acting for
(13) the agent and joint owners. I had been doing that
(14) since 1984. I had been acting as agent for the
(15) joint owners and all the joint-owned facilities, so
(16) that's the first line in the memo.

(17) He goes on to say it's his understanding,
(18) when we negotiate a new contract with GPC and
(19) SONOPCO, that he would be the one negotiating that
(20) and act as their agent. That was not going to
(21) happen, either. I had been the lead negotiator
(22) negotiating Southern Nuclear and all these other
(23) contract changes we've been talking about since
(24) early '88, a year before, so here he was in an
(25) ill-defined role that really did not have a

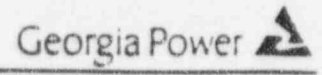
(1) Oglethorpe had told me before was that they just
(2) wanted to make sure NRC was comfortable with the
(3) dual hat rule, being an officer of Southern Nuclear
(4) and Georgia Power and Alabama Power at that time.

(5) I said, Marvin, a lot of these problems
(6) you've got in your memo just are not true; they're
(7) not factual. I said, if we tried to get an
(8) organization like yours off the ground, there would
(9) be an interface between a new project and the rest
(10) of the co-owners and us.

(11) You know, the memo, one, is not factual.
(12) I can tell you some of the things in there that are
(13) wrong now. You're complaining and you're whining a
(14) lot in the memo, Marvin, my manager style would be
(15) that you need to sit down with these people and try
(16) to work things out and not just fire a memo off
(17) accusing people and saying things are not working
(18) right. You need to consider that before you send
(19) this memo out. And that was my discussion with
(20) Marvin in a nutshell.

(21) MR. URYC: So what you're saying is that
(22) in reality, the April 27th memo from Mr. Hobby was,
(23) in fact, a work product you had directed him to do,
(24) that being, Mr. Hobby, please define what your view
(25) of NOCA is and what its responsibilities are going

Position Questionnaire



POSITION TITLE General Manager Nuclear Operations Contract Administration		
EMPLOYEE M. E. Hobby	REPORTS TO (POSITION TITLE) Senior Vice President Fossil & Hydro	
DEPARTMENT Nuclear Operations	PERSON'S NAME COMPLETING PQ	
DEPARTMENT NO.	REVIEWED BY (EMPLOYEE) <i>M.E. Hobby</i>	DATE 1/16/89
ORGANIZATIONAL UNIT (V.P.'S DEPARTMENT TITLE) Fossil & Hydro	APPROVED BY (IMMEDIATE SUPERVISOR)	DATE
WORK LOCATION 14/333	APPROVED BY	DATE

I. POSITION SUMMARY

Describe the primary reason this position exists in the company.

To manage the contract for the operation of the Company's nuclear power plants including establishing performance goals, accountabilities, long range nuclear planning, and budgets; to be responsible to the Joint Owners for the operation of the Company's nuclear power plants.

II. POSITION REQUIREMENTS

KNOWLEDGE: List the areas of special knowledge: (e.g., engineering, accounting, general business theories/practices, procedures). Indicate how they are used in this position.

Contractual obligations - understanding of contract law and the obligations of the contracting firm to Georgia Power Company and GPC's obligations to the Joint Owners, comprehensive knowledge of nuclear plant operations in regard to engineering principles, accounting, budgeting, etc. A detailed knowledge of joint agreement between the Joint Owners (OPC, MEAG, and the City of Dalton) and GPC regarding the operation of the nuclear plants. A detailed knowledge of the nuclear utility industry and of the operations of INPO and the NRC.

SKILLS: List the various skills needed in the position. Include technical, administrative and clerical skills, analytical/thinking skills, written and oral communication skills, managerial and interpersonal skills. Also, indicate how these skills are used in the position.

Technical and analytical skills to determine performance trends of the Company and industry; significant managerial and interpersonal skills to maintain positive interaction with contractor (SONOPCO), other Southern Company subsidiaries and the Joint Owners of the nuclear facilities, (OPC, MEAG, and the City of Dalton).

POSITION TITLE

General Manager N.O. Contract Admin.

EMPLOYEEM. B. Hobby

III. POSITION RESPONSIBILITIES

List this position's Major Responsibilities in their order of importance (1,2,3, etc.) Indicate the approximate percentage of the total work time spent annually on each responsibility.

MAJOR RESPONSIBILITIES**% OF TIME**

- | | |
|--|-----|
| 1. To manage all aspects of the contract with SONOPCO to achieve the safe, dependable, and cost effective operation of our nuclear power plants. | 70% |
| 2. To establish reasonable goals, accountabilities, and budgets for nuclear operations that support Georgia Power Company's Business Management Plan. | 30% |
| 3. To monitor nuclear operations to ensure performance is supportive of GPC's Business Management Plan. | 15% |
| 4. To serve as the primary interface between Georgia Power Company and SONOPCO and between Georgia Power and Joint Owners in nuclear operation matters. | 15% |
| 5. To be the primary interface with other Company functions including top management and with the Public Service Commission on matters related to nuclear operations including budget, financial planning, prudence and performance. | 10% |

POSITION TITLE

General Manager N.O. Contract Admin.

EMPLOYEE

M. B. Hobby

IV. POSITION ACTIVITIES

COMPLEXITY/DIVERSITY: List the most difficult or challenging aspects of this position. Also, if this position is responsible for coordinating/ managing a variety of activities or functions, please list these management tasks.

The most challenging aspect of the job involves the relationship between GPC and SONOPCO. It will be most important for this position to ensure that SONOPCO management understands and incorporates the goals and the accountabilities that GPC develops for them and that SONOPCO operates in a manner that supports the accomplishment of GPC's corporate objectives and Business Plan.

JUDGEMENT/DECISION-MAKING: List examples of the types of judgements this position requires and the frequency (daily, weekly, monthly, etc.)

- Budgeting Process * Approve the Nuclear Operations annual budget - annually
- * Monitor budget - daily
- Plant Monitoring * Approve annual goals - annually
- * Monitor goals' achievement - daily
- Information Resource * PSC hearings on prudence - monthly
- * Top management requests - daily
- * Board of Directors - monthly

RISK: List examples of risk taking that may be required of this position. (i.e., taking action where the eventual outcome is not clearly known.)

The primary risks are to ensure GPC's interests are protected while maintaining a professional and cooperative relationship with SONOPCO.

CREATIVITY/INNOVATION: List examples of new methods, procedures or concepts the position may develop.

Since this agreement is rather different, there will be opportunities available to develop alternative budgeting methods. The uniqueness of the agreement also offers the chance to develop more meaningful performance indicators. New communicative methods could be developed to disseminate information on SONOPCO to interested parties.

V. RESULTS OF ACTION

CONTRIBUTION: List the direct and/or shared responsibilities of this position that contribute to the success of the company and/or organization

The ability of this position to influence the management of SONOPCO to operate in a manner that best meets the interest of GPC would be significant. Also, this position has the responsibility for coordinating all the administrative activities between the two Companies. Another area of concern would be the position's ability to determine the budget needs of SONOPCO based on operating goals that are established through this position's direction.

POSITION TITLE

EMPLOYEE

General Manager N.O. Contract Admin.

M. B. Hobby

VI. SCOPE

Provide annual statistics that convey the scope and volume of this position. (Revenue, customers, megawatts, capital, O & M, contracts etc.)

Plant Hatch 1630 MW

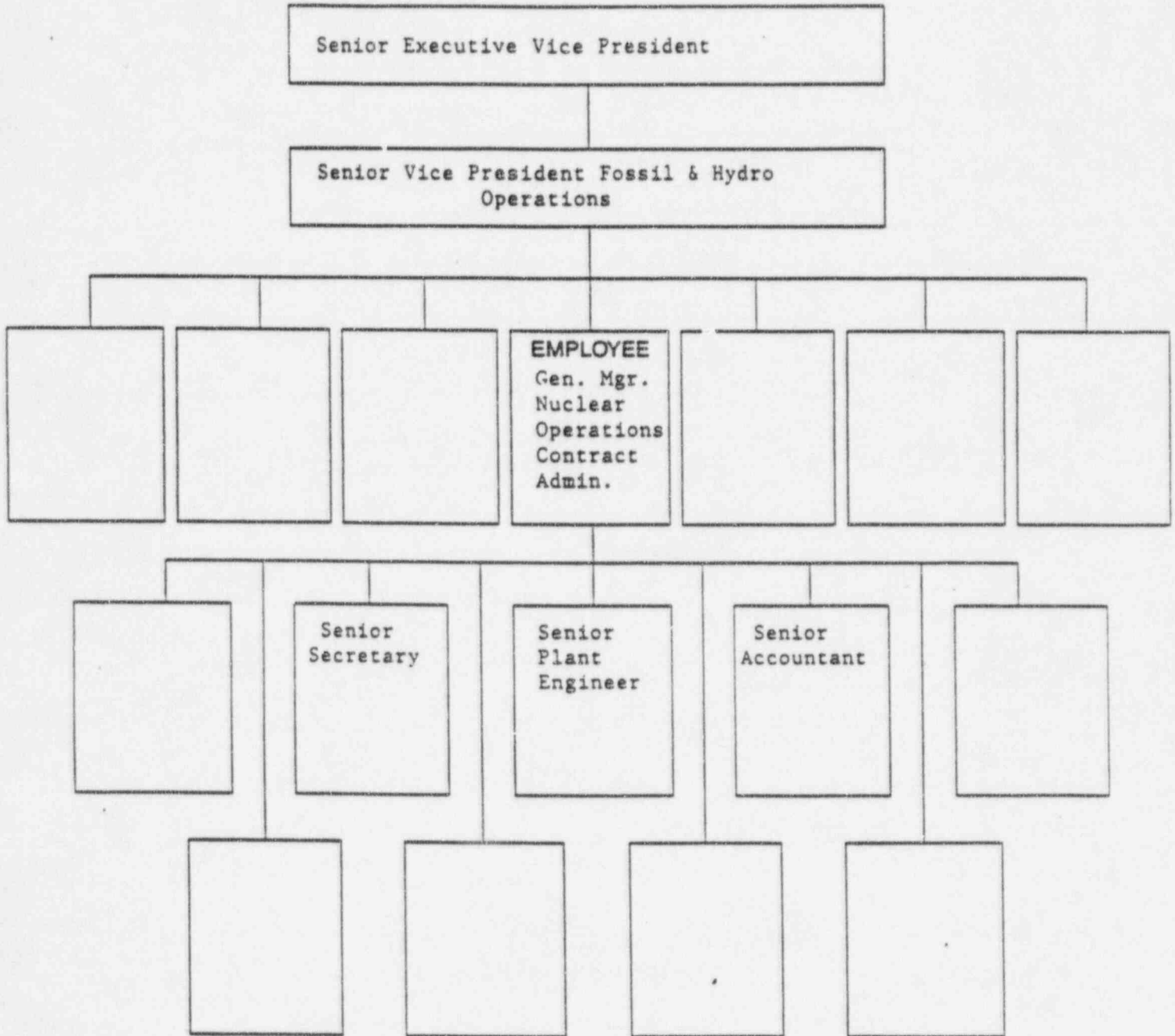
\$250 MM Operating Budget Hatch and Vogtle

Plant Vogtle 2320 MW

\$73 MM Capital Budget Hatch and Vogtle

VII. ORGANIZATION

Complete the organization chart below. Identify the two positions above this position, peer positions reporting to the immediate supervisor/manager and subordinate positions reporting directly to this position (use titles only).



	EXEMPT	NONEXEMPT	UNION	CONTRACT	TOTAL
PERSONNEL SUPERVISED	<u>2</u>	<u>1</u>	<u> </u>	<u> </u>	<u>3</u>

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME I</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Tuesday, October 23, 1990

The above-entitled matter came on for hearing,
pursuant to Notice, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

I N D E X

WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Marvin B. Hobby	44	219	--	--

EXHIBITS:

	<u>IDENTIFIED</u>	<u>RECEIVED</u>
<u>Complainant's:</u>		
Nos. 1 thru 21	Premarked	10
Nos. 23 thru 25	Premarked	10
Nos. 27 thru 35	Premarked	10
<u>Respondent's:</u>		
Nos. 1 thru 18	Premarked	12
No. 19 - Letter 5/1/89	254	256

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Thomas J. McHenry	279	293	298	--
Alfred W. Dahlberg	302	321	361	--
Dwight H. Evans	363	376	--	--
Fred D. Williams	399	440	--	--
Thomas G. Boren	475	501	508	--
Lee Glenn	509	520	523	--
William R. Evans	525	539	--	--

EXHIBITS:IDENTIFIED RECEIVED

Complainant's:

Nos. 36 & 36-A - Dahlberg Calendar	350	352
Nos. 37 & 37-A - Williams Calendar	460	460

Joint:

No. 1 - Stipulation	398	398
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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
E. P. (Dennis) Wilkinson	544	557	--	--
Joseph M. Farley	564	579	--	--
R. P. McDonald	601	619	--	--
George F. Head	643	658	--	--
H. G. Baker	678	690	705	709

EXHIBITS:

Complainant's:

No. 38 - Wilkinson bio

IDENTIFIED RECEIVED

548

548

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Jesse P. Schaudies, Jr.	716	725	--	--
Marvin B. Hobby	764	--	--	--
Donald W. Janney	765	772	--	--
Robert P. Edwards, Jr.	776	779	780	--
Carey Don Proctor	781	785	--	--

1 Q. And is that normal to receive a two-level
2 increase?

3 A. It happens, but it would not be the norm I would
4 not think.

5 Q. And prior to becoming the general manager of
6 Nuclear Operations Contract Administration, did you have
7 discussions about what level you would be placed at in that
8 job?

9 A. Yes. Mr. Head talked to me about the level that I
10 would be, and as a matter of fact he named me as his
11 assistant, assistant to the senior vice president and
12 general manager of Nuclear Operations Contract
13 Administration, and he told me that it would be a Level 20.

14 Q. Was a position description written for your new
15 job?

16 A. Yes, sir, it was.

17 Q. And who drafted that position description?

18 A. I worked with the personnel and salary
19 administration in writing the position description, and I
20 submitted it to Mr. Head for his approval.

21 Q. Did Mr. Head approve it?

22 A. Yes.

23 Q. I call your attention to Exhibit Number 13. Is
24 this the position description, a copy of the position
25 description that Mr. Head approved?

1 A. This was a questionnaire, the position
2 questionnaire which is what you use to determine the level
3 in the company, yes, sir.

4 Q. And what was your salary at this time?

5 A. In January of 1990?

6 Q. Yes.

7 A. After being named to a Level 20 job?

8 Q. That's correct.

9 A. \$103,104 a year, plus I was in the PIP program
10 which allowed me I think it was a 20 percent bonus.

11 Q. Do you recall what your salary was prior to your
12 two-level promotion?

13 A. I believe it was around \$95,000.

14 Q. And does Exhibit 13 outline the responsibilities
15 you would have?

16 A. Yes, sir, it does.

17 Q. And in order to have been named in that position,
18 did you need formal approval from whom at Georgia Power
19 Company?

20 A. Well, to be named to that position my
21 understanding from Mr. Head was that he was asked by Mr.
22 Dahlberg -- Mr. Head said that he and Mr. Dahlberg and Mr.
23 Baker had gotten together, discussed the creation of this
24 position, decided to form the Nuclear Operations Contract
25 group, Mr. Dahlberg decided they would be under Mr. Head,

1 and Mr. Head asked -- excuse me -- Mr. Dahlberg asked Mr.
2 Head who he would put in that position, Mr. Head said Marvin
3 Hobby, and that was okay with Mr. Dahlberg.

4 Q. And to receive your salary increase, did that have
5 to be approved by anyone?

6 A. I believe it just had to be approved by Mr. George
7 Head.

8 Q. I call your attention to Exhibit 14. Can you
9 describe what this document is?

10 A. This is a history of nuclear operations contract
11 administration. It really is a description of how the
12 salary administration group got to the Level 20.

13 Q. And to the best of your understanding is the
14 content set out in Exhibit 14 correct?

15 A. Yes.

16 Q. Can you summarize what occurred?

17 A. The salary administration group worked with me on
18 the position questionnaire, we discussed it with Mr. Head,
19 he approved it; salary administration talked with Mr. Head,
20 and Mr. Head named me to the additional position of his
21 assistant and established the level at a Level 20.

22 Q. Now I'd like to discuss a little bit about how the
23 Nuclear Operations Contract Administration group was
24 staffed.

25 JUDGE WILLIAMS: Before we get into another area,

AFTERNOON SESSION

1
2 JUDGE WILLIAMS: Mr. Kohn, do you want to proceed
3 with this witness?

4 MR. KOHN: Thank you, your Honor.

5 WHEREUPON,

6 MARVIN B. HOBBY

7 resumed the witness stand as a witness in his own behalf,
8 and being previously duly sworn, was examined and testified
9 further as follows:

10 FURTHER DIRECT EXAMINATION

11 BY MR. KOHN:

12 Q. Mr. Hobby, I believe we were going to begin with
13 the staffing of the nuclear operations contract
14 administration. Do you recall discussions during the time
15 the nuclear operations contract administration was being
16 formed about what the staff would be for the group?

17 A. Yes, sir. Yes, sir, as I recall, in December of
18 1988 Mr. Head asked me to write up for him a white paper
19 which specified what and how the nuclear operations contract
20 administration group was supposed to interact with the
21 SONOPCO project and then the SONOPCO corporation when it was
22 eventually formed.

23 He asked me to tell him how I would set up such a
24 group, and he asked me what level of staffing would be
25 required to perform the functions that he had assigned to

1 us.

2 Q. And after you developed your -- did you refer to it
3 as a white paper?

4 A. Yes, it was a position paper that I wrote to Mr.
5 Head.

6 Q. After you did your position paper, did you have
7 further conversations with Mr. Head?

8 A. Yes, I did.

9 Q. And would you tell me what those conversations
10 were?

11 A. In my white paper I suggested to Mr. Head that I
12 thought in addition to the general manager's job we ought --
13 we of course needed a senior secretary, two performance
14 engineers and two nuclear financial administrators.

15 Q. Did Mr. Head agree with your proposal?

16 A. Mr. Head did agree with my proposal. However, he
17 suggested that until -- as we were beginning to work out our
18 policies and our procedures and how we were going to do
19 business with SONOPCO he said that what he would like to do
20 is start with one performance engineer and one nuclear
21 financial administrator, and the other two positions, the
22 extra, the second performance engineer and the second
23 financial administrator would be put in what's called
24 Level 2 funding, which means that the positions are approved
25 but the money has not been officially released so that a

1 manager could spend it at that time.

2 Mr. Head said that as we developed our program an
3 as we established the interface with SONOPCO, and as
4 additional needs -- as the need for additional employees
5 grew he would release that money from the Level 2 funding.
6 Excuse me. He would release it as the need dictated.

7 Q. And did you begin to fill the positions?

8 A. Yes, sir. I interviewed a young man for a
9 nuclear performance administrator. He was in our budgeting
10 group, and he came on board in late February of 1989, his
11 name is Gerald Johnson, J-o-h-n-s-o-n.

12 And as far as the performance engineer's position,
13 which I was in nuclear operators as manager of nuclear
14 support we had a young man working for us who was very good,
15 and he was doing that type of work for me in 1988. He had
16 indicated an interest to me in coming to work for us in
17 nuclear operations contract administration.

18 I talked to his boss who was the vice president of
19 the Vogtle project in Birmingham, Mr. Ken McCoy, and I asked
20 Mr. McCoy if I could have Mike Barker as a nuclear
21 performance engineer.

22 Mr. McCoy told me that the procedure was that if
23 the job that I was interested in Mike filling, if that job
24 were a promotion for Mike then SONOPCO would approve it, but
25 that they did not want him to transfer unless it were a

1 They had talked with Mr. Baker, and the note says
2 "H.G.B. talked to Lee Glenn, warm and congenial" meaning
3 they had a nice talk, "no answer yet, Farley to provide,
4 Farley makes call."

5 Q. What does that refer to in your notes, Farley
6 makes call?

7 A. As to whether or not I could hire a nuclear
8 performance engineer in my organization.

9 Q. And did you ever learn whether you could hire that
10 performance engineer?

11 A. Yes, sir.

12 Q. And?

13 A. In late May, I believe the date was May 23rd -- as
14 I mentioned, Mr. Head retired effective May 1st, and Mr.
15 Carey Adams was named senior vice president of fossil and
16 hydro power.

17 Mr. Adams and his assistant, Mr. Shannon, came
18 down to my office on May 23rd to meet with me and talk with
19 me, and Mr. Adams said on the way down here Grady came out
20 of his office on the 24th floor and said "You are to hire no
21 more people in your organization."

22 Q. Did Mr. Adams call you before coming down to visit
23 you?

24 A. His assistant did.

25 Q. Would you happen to know the May 23rd entry in

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME II</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Wednesday, October 24, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

1 Power Company, you indicated that Mr. McDonald reports to
2 you. Does Mr. McDonald take all of his management direction
3 from you with respect to the operation of Georgia Power
4 Company's nuclear plants?

5 A. That's correct.

6 Q. Now, Mr. Dahlberg, I would like to ask you to
7 describe the SONOPCO project.

8 A. The SONOPCO project was originally envisioned as a
9 separate corporation. However, now it operates without a
10 corporate identity and operates in effect as a division of
11 the company, or a division of the Southern Company.

12 It is divided now so that it has specific
13 responsibilities for Georgia Power Company as we've indicated
14 for the operation of the Georgia units, and also has a
15 separate responsibility for Alabama's units.

16 It is not yet a corporate entity and does as I say
17 operate as in effect a division of The Southern Company.

18 Q. And with respect to the operation of Georgia Power
19 Company's nuclear plants, Plant Hatch and Plant Vogtle, does
20 SONOPCO function as a division if you will or department of
21 Georgia Power Company?

22 A. Yes. It's very similar to our fossil and hydro
23 plants which are the other type plants we have. We have a
24 senior officer responsible for the operation of those plants,
25 and the nuclear organization works basically the same way.

1 When the SONOPCO project was initially being
2 discussed, was there an idea that there would be several
3 phases in implementing the SONOPCO organization?

4 A. Yes and no. The original concept was that SONOPCO
5 would be a separate corporate entity, a subsidiary approved
6 by the Securities and Exchange Commission, and there probably
7 would not have been the need for going through several
8 phases.

9 When we ran into a delay in the formation of the
10 corporate entity, we proposed a structure that, yes, would go
11 through several phases before the organization was completed.

12 Q. And just briefly, Mr. Dahlberg, what are the three
13 phases of implementing the SONOPCO idea?

14 A. Well, the first phase is the phase that we are now
15 in, and that is that we would form the entity as a division,
16 we would begin to put the structure together, but that the
17 officers of that corporation would be both officers of
18 Georgia and Alabama, would maintain a position in this
19 organization, we would maintain the license as part of
20 Georgia's operation, the operation of course would report
21 directly to me and we would operate it in that fashion.

22 The subsequent phases would be when the corporation
23 is formed and it could become its own entity, and would begin
24 to shift to that organization, and then finally once the
25 organization was formed, up and running, a third phase was

1 that all operations could move to that separate subsidiary.

2 Q. Would the licenses be transferred to SONOPCO as
3 part of the third phase of the implementation?

4 A. That's correct.

5 Q. Mr. Dahlberg, who is Mr. Joe Farley?

6 A. Mr. Farley is senior I guess executive vice
7 president of The Southern Company, former chief executive
8 officer of Alabama Power Company, and he heads up the
9 formation of the SONOPCO project and that entity.

10 Q. Is Mr. Farley an officer of Georgia Power Company?

11 A. No, he's not.

12 Q. Is it expected that Mr. Farley would become an
13 officer of SONOPCO once SONOPCO is incorporated?

14 A. Yes, it's anticipated that he would be the chief
15 executive officer.

16 Q. Who is expected to be on the board of directors of
17 SONOPCO once SONOPCO is incorporated?

18 A. Final decisions have not been made. The
19 discussions at this point were that Mr. Farley would be, I
20 would be as chief executive officer of Georgia Power Company,
21 the chief executive officer of Alabama Power Company which
22 would be the owner of the Farley units, Mr. Ed Addison who is
23 the chief executive officer of The Southern Company which is
24 the holding company, probably the chief executive officer of
25 Southern Company Services, and perhaps a couple of other

1 Q. Mr. Dahlberg, what was the purpose of establishing
2 the nuclear operations contract administration group?

3 A. I had talked to Mr. Head about heading up a group
4 to review what was happening in the nuclear organization. At
5 that point in time I thought that there would be a contract
6 in effect between the SONOPCO project and -- or between
7 SONOPCO and Georgia Power Company, and there would be some
8 need to administer that contract, to check the performance
9 under that contract with SONOPCO.

10 Q. Mr. Dahlberg, the contract which you referenced,
11 that's a contract that would have been executed between
12 Georgia Power and SONOPCO once SONOPCO was incorporated; is
13 that right?

14 A. That's correct.

15 Q. In your mind, Mr. Dahlberg, was there any function
16 for the nuclear operations contract administration group to
17 perform if SONOPCO had not been approved, had not been
18 incorporated, and there had been no contract executed between
19 SONOPCO and Georgia Power Company?

20 A. Well, certainly if there was no contract there
21 would have been no administration of that contract. In fact,
22 we don't have a contract today.

23 There could have been some other duties, and that
24 is just to monitor the performance of nuclear operations and
25 look at how well the plants are running, costs, and those

1 type things, and in effect the SONOPCO project does that
2 themselves, and it would have been a duplication of that
3 function that they now perform.

4 Q. At the time you issued this memorandum at Tab 2 of
5 Exhibit R-18, when did you expect to receive SEC approval and
6 to incorporate SONOPCO?

7 A. Well, again I thought it would be a matter of
8 months.

9 Q. Going now, Mr. Dahlberg, to a point in time in
10 1989, who was responsible for recommending that the position
11 of general manager of nuclear operations contract
12 administration be eliminated?

13 A. I would think it would have been Mr. Evans or
14 perhaps Mr. Williams.

15 Q. Okay. Do you know the reasons for the decision and
16 recommendation that the position of general manager be
17 eliminated?

18 A. Yes. There was not a function to be performed.
19 There was no contract, and I had determined that the other
20 things that I saw could be performed by that group, that is a
21 monitoring of performance wasn't necessary and that SONOPCO
22 did that themselves.

23 The same thing happens in the fossil and hydro. I
24 don't have, for example, a separate organization that looks
25 at the performance of that group, they do it themselves, and

1 there just wasn't a need for that position because there were
2 no functions to perform.

3 Q. Was a recommendation to eliminate the position of
4 general manager discussed in any of the management council
5 meetings in the latter part of 1989?

6 A. I'm not sure the position itself was discussed. We
7 discussed on several occasions the overall structure of the
8 organization, we looked more at the people that we had in
9 jobs and their performance, their potential and so forth, but
10 I don't think we had specific discussions about elimination
11 of positions.

12 Q. The meeting that you just referenced where
13 particular individuals were discussed and evaluated, was that
14 meeting November 7th of 1989?

15 A. I believe that's correct. It was late in that
16 year.

17 We had had an earlier meeting that had only talked
18 about the senior levels in the organization, about those
19 people and about ourselves. This was our management council
20 group.

21 I think at the meeting you referenced we talked
22 about the entire organizational structure.

23 Q. Do you remember whether or not Mr. Pat McDonald was
24 at that meeting?

25 A. He was not.

1 A. No, not in detail.

2 Q. Do you know generally what concerns are expressed
3 in the memorandum?

4 A. I would have to read it again. I'm not that
5 familiar with it.

6 Q. If you would, Mr. Dahlberg, let me refer you to
7 Page 7 of the memorandum. Half way down the page do you see
8 a paragraph "A significant concern...?"

9 A. Yes.

10 Q. Just take a moment and read that to yourself.

11 Mr. Dahlberg, was the April 27th memorandum or the
12 concern expressed there on Page 7 that I asked you to take a
13 look at discussed in the management council meeting of
14 November 7th, 1989?

15 A. No, sir.

16 Q. To your knowledge, Mr. Dahlberg, was the April 27th
17 memorandum, or the concern expressed on Page 7 a factor in
18 any way in the decision to eliminate the position of general
19 manager/nuclear operations contract administration?

20 A. No, sir.

21 Q. And did you, Mr. Dahlberg, discuss with Mr. Evans,
22 Mr. Tom Boren and Mr. Williams the reasoning behind the
23 recommendation to eliminate this general manager position?

24 A. I don't recall specific discussions other than it
25 was just an unneeded job, there wasn't a function there. I

1 don't remember having a lengthy discussion about it.

2 Q. Did anyone ever tell you, Mr. Dahlberg, that Mr.
3 Hobby believed that Mr. McDonald reported to Mr. Farley
4 instead of to you?

5 A. Not until these litigations began.

6 Q. Was that issue ever discussed in management council
7 meetings?

8 A. No, sir.

9 Q. Did you discuss that with Mr. Boren or Mr. Williams
10 or Mr. Evans?

11 A. No, sir.

12 Q. Mr. Dahlberg, let me direct your attention now to a
13 proceeding brought by Mr. Fuchko and Mr. Yunker under the
14 Energy Reorganization Act.

15 Are you familiar at all with that proceeding?

16 A. I knew that it occurred. It occurred as I came
17 back to Georgia Power Company, but the details and the
18 subject of it I was not familiar with, no, sir.

19 Q. Did anyone ever tell you, Mr. Dahlberg, that Mr.
20 Hobby contended that Mr. Pat McDonald gave false or
21 inaccurate testimony in the Fuchko and Yunker proceeding?

22 A. No, sir.

23 Q. Was Mr. Hobby's involvement in the Fuchko and
24 Yunker proceeding discussed in any of the management council
25 meetings?

1 A. No, I didn't know he was involved.

2 Q. Did you discuss that with Mr. Evans, Mr. Boren or
3 Mr. Williams?

4 A. No, sir.

5 Q. To your knowledge, Mr. Dahlberg, was that
6 contention of Mr. Hobby's a factor in any way in the decision
7 to eliminate the position of general manager/nuclear
8 operations contract administration?

9 A. No, sir.

10 Q. Mr. Dahlberg, did Mr. Pat McDonald or Mr. Joe
11 Farley ever state to you that they wanted Mr. Hobby
12 terminated?

13 A. No, sir.

14 Q. Did they ever tell you that they wished to see Mr.
15 Hobby leave the employment of Georgia Power Company?

16 A. No, sir.

17 Q. Were you ever advised that Mr. Hobby or Mr. Head,
18 George Head, felt that the nuclear operations contract
19 administration group was not getting sufficient cooperation
20 from SONOPCO?

21 A. No. The only thing I was aware of is that there
22 wasn't much information to be worked on, and I think that's
23 one of the things that led to the elimination of the job,
24 there just wasn't a function there. That's the only thing I
25 recall.

1 administration. In your mind that contract between Georgia
2 Power and SONOPCO was going to come right around the corner;
3 right?

4 A. I don't know whether months is right around the
5 corner, but I did anticipate that SONOPCO would be formed in
6 a matter of months, yes.

7 Q. All right. So you set up the nuclear operations
8 contract administration group to do all the functions that
9 -- budgeting, oversight, interface and a host of other things
10 -- right? -- and the reason you did that was so nuclear
11 operations contract administration could start functioning
12 immediately because a contract was imminent; right?

13 A. That's part of the reason. The other reason was
14 the SONOPCO organization was new. I don't think any of us
15 knew exactly how it would operate and exactly what would be
16 required.

17 I anticipated that, yes, it would be formed; yes, I
18 anticipated there would be a contract and there would be
19 something to administer; yes, I anticipated that we would
20 need somebody to be involved in gathering information about
21 the performance of the units, about the budget, about safety
22 factors.

23 As it turned out, one, there is no contract;
24 secondly, those things that I thought would be required in
25 terms of monitoring performance, we're monitoring

1 performance, but I get that information directly from the
2 SONOPCO organization, just like I get information directly
3 from the fossil information group, I get information directly
4 from our marketing group, and there was no need for a
5 separate organization to do basically the same thing.

6 You mentioned budgeting. SONOPCO does the budget,
7 they review it directly with me. There's not a function in
8 the middle.

9 Q. And SONOPCO was new, and nuclear operations
10 contract administration was new.

11 A. Yes.

12 Q. Almost simultaneously new; right?

13 A. Of course.

14 Q. Okay. And so now you're setting up nuclear
15 operations contract administration, and you don't want to
16 duplicate efforts; right?

17 A. Correct.

18 Q. And so you wanted to set up nuclear operations
19 contract administration to do certain things; right?

20 A. Yeah, I've just described that.

21 A. All right. But it ends up now that SONOPCO is
22 doing those things, and not nuclear operations contract
23 administration group; isn't that correct?

24 A. That's absolutely correct.

25 Q. All right. So you set up nuclear operations

1 contract to do certain things, at the same time you set up
2 the SONOPCO project, but somehow along the way your whole
3 concept of why you created SONOPCO has fallen apart, and
4 you've got all those functions, and you started to stick them
5 in the SONOPCO organization; right?

6 A. No, you made a -- one thing you said was wrong.
7 You said my expectations for SONOPCO fell apart, and that was
8 not correct.

9 Q. Your contract.

10 A. Those things that I thought the contract group
11 would do did not materialize because I got the information
12 from another source, there was no contract to administer.
13 There really wasn't a function to perform.

14 Q. But when you set up nuclear operations you thought
15 there was going to be this contract, so it only made local
16 sense to allow nuclear operations to start doing those
17 functions -- right? -- you have a new SONOPCO project forming
18 with a whole headache and a host of problems associated with
19 moving offices, with hiring staff, with ten thousand new
20 things to do with every new major corporation creation, and
21 you had nuclear operations contract administration group
22 already established, there are offices at Georgia Power
23 Company, the space was there, you could relieve this whole
24 burden off of SONOPCO's back by allowing Marvin Hobby's
25 nuclear operations contract administration group just to pick

1 responsibilities he may have had with respect to performance
2 indicators?

3 A. I did not, and to my knowledge Mr. McDonald did
4 not.

5 Q. You mentioned that you came back to the company I
6 think the late part of '88.

7 After returning to the company, did you develop an
8 opinion about the necessity for the nuclear operations
9 contract administration?

10 A. Yes, I did.

11 Q. And what was your opinion?

12 A. I believed that we should have multiple points of
13 interface with the new company, that as an example I was
14 responsible among other things for interfacing with the
15 Public Service Commission.

16 I felt like that the accounting organization at
17 Georgia Power that presented testimony, presented information
18 to the Public Service Commission should have direct access to
19 people at SONOPCO, and all across the board.

20 I felt like we did not need a high level position
21 to interface with SONOPCO, that we should interface with them
22 in many ways similar that we do with the service company
23 where we have many people dealing and more liens of
24 communication.

25 Q. And did you discuss your opinions on that subject

1 with Mr. Fred Williams?

2 A. I did later in the year. Due to a retirement of an
3 executive I knew that there would be reorganization and Mr.
4 Williams would begin reporting to me at the end of the year,
5 and there would be changes taking place, so that in late 1989
6 after the rate case, probably in the late October-November
7 time frame, we began having discussions as to how we should
8 organize and proceed.

9 Q. And as of January 1, 1990 Mr. Williams would start
10 reporting to you?

11 A. That is correct.

12 Q. Okay. So that's the reason you were having these
13 discussions in late 1989 about the contract administration
14 group?

15 A. Yes.

16 Q. What was Mr. Williams' recommendation regarding the
17 contract administration group, and in particular Mr. Hobby's
18 position?

19 A. He concurred with my feeling that we did not need a
20 high level position, and that was a position that could be
21 eliminated.

22 Q. What were his reasons for making that
23 recommendation to you as you understood?

24 A. That in proceeding through the 1989 rate case it
25 was obvious that we were not getting information timely to

1 respond to the data requests, and that the position, it was
2 more of a bottleneck and did not allow for the type of
3 communications we needed, and that we could abolish the
4 position, and that other officers and other employees of
5 Georgia Power Company could perform those duties rather than
6 having them consolidated in a single position.

7 Q. Now, did you discuss Mr. Williams' recommendation
8 with Mr. Boren?

9 A. Yes, I did.

10 Q. Okay. And did Mr. Boren agree with the
11 recommendation of Mr. Williams?

12 A. He agreed with our recommendation, yes.

13 Q. Was Mr. Hobby's job performance a reason for
14 recommending the elimination of his position?

15 A. No, his performance was not the reason. It was the
16 fact we did not need the position.

17 Q. Let me get you to turn to Tab 3 in Exhibit R-18
18 which is an April 27, 1989 memo from Mr. Hobby to Mr.
19 Williams.

20 Have you ever seen or heard of that document
21 before?

22 A. I have in the course of this case. I had not seen
23 or heard of it prior to this case.

24 Q. Was this memo ever mentioned in any of your
25 conversations with Mr. Williams and Mr. Boren regarding the

1 MR. KOHN: That would definitely shorten things.

2 JUDGE WILLIAMS: All right. Let's do it, then.

3 MR. COLAPINTO: Do you have a copy with you?

4 MR. WITHROW: Yes, I do.

5 (Pause.)

6 MR. KOHN: Your Honor, we can read this into the
7 record after the witness.

8 MR. JOINER: The object of the stipulation, your
9 Honor, is to eliminate a need for all these questions.

10 MR. KOHN: I'm off that subject.

11 MR. WITHROW: We'll get it in later.

12 BY MR. KOHN:

13 Q. Now, what prompted you to begin looking into the
14 elimination of Mr. Hobby's job was the fact that Fred
15 Williams told you that Mr. Hobby was leaving the company, had
16 requested an early out package?

17 A. No, I had begun thinking about it prior to that.
18 Mr. Williams did make me aware that Mr. Hobby had approached
19 him late in the year and that in fact Mr. Hobby had raised
20 that issue. I didn't recall any of the details.

21 The first conversation I had with Mr. Williams on
22 the topic was at that point in time. I had thought about the
23 subject prior to that in looking over positions to streamline
24 the senior management of the company, looking at positions
25 that could be eliminated.

1 Q. But isn't it true that it was your understanding
2 that Mr. Hobby had contacted Mr. Williams about an early out
3 package and that's what initiated the conversations between
4 you and Mr. Williams to restructure the nuclear operations
5 contract administration?

6 A. That was discussed in one of our conversations. I
7 don't recall if it was the first conversation or not, but
8 that was discussed in one of the conversations.

9 Q. Could you just read into the record from Line 11 to
10 Line 23 on Page 84 of your deposition?

11 A. Line 11? Line 11 is an answer:

12 "November of '89 is when we mentioned that we would
13 begin restructuring to do some changes in the company, and
14 when we restructure how do we need to be organized. That was
15 the tone of the overall conversation."

16 Q. Thank you. Where did you stop reading?

17 A. (Indicates.)

18 Q. Continue to read all the way down to the end of the
19 page.

20 A. The question: "Okay. Was it at your request that
21 Mr. Williams was going to engage in a fact-finding mission to
22 determine whether the position was needed?"

23 Answer: "It was my understanding Mr. Hobby had
24 contacted Mr. Williams about an early out package, and that's
25 what initiated the conversation."

1 agreement, a revision to the transmission agreement, a
2 revision to the O&M agreement.

3 They had raised the possibility of opening up our
4 nuclear contracts to change the ownership and operating
5 contracts to give them more control in those contracts, and
6 since SONOPCO, the formulation of that became an issue, that
7 was rolled into our overall negotiations.

8 Q. Now, in the fall of 1988 following the intervention
9 of Oglethorpe before the SEC, what was the anticipated
10 timetable for incorporating SONOPCO and getting underway with
11 that contract between Georgia Power and SONOPCO?

12 A. In the fall of 1988 we were very optimistic in
13 these other negotiations, the power supply agreement and
14 transmission agreement, that were very close we thought to a
15 new arrangement which would satisfy these conditions that I
16 mentioned before in the nuclear license conditions.

17 With that, since the whole SONOPCO intervention to
18 me was just to tie all these issues together -- in fact, they
19 made that statement to us in negotiations that all these
20 issues were linked, the formation of SONOPCO, the creation of
21 a new power supply agreement and arrangement with them were
22 all linked -- in fact, they were linking all the agreements
23 that we needed to get them all done, but where we thought we
24 were in the power supply and transmission negotiations in the
25 September-October-November time frame of 1988, we were

1 supervise Mr. Hobby or to work with him in his capacity as
2 general manager of that group?

3 A. Yes, sir. In the negotiations that were ongoing at
4 that time we were developing or toying with the concept in
5 negotiations of what we called a managing board agreement
6 concept, and we invited Mr. -- I invited Mr. Hobby to start
7 attending those negotiations with us in his new capacity as
8 manager of this nuclear operations contract administration
9 group since he would be directly involved if we were
10 successful in getting the contract negotiated and a
11 corporation set up.

12 Q. And did you have continuing contact with Mr. Hobby
13 throughout 1989?

14 A. Yes, sir. As the negotiations continued, even when
15 the negotiations somewhat halted because of other reasons
16 than SONOPCO, I continued meeting with Mr. Hobby because Mr.
17 Hobby saw, and I was given the responsibility of negotiating
18 those contracts, and he was directly involved in what I was
19 doing, so we had continual contact throughout 1989.

20 Q. Did there come a point in time when it was decided
21 that Mr. Hobby would begin reporting directly to you?

22 A. Yes, it did.

23 Q. Okay. And when was that, and tell the judge if you
24 would, please, why that decision was made.

25 A. On January 1, 1990 was the official transfer of Mr.

1 Hobby's reporting to me.

2 Prior to that time we had been -- in fact, I had
3 been as part of my negotiations reviewing the need for not
4 just Mr. Hobby's job, but the total organization and how it
5 would be fitted in with the new relationship that we were
6 negotiating, and I had conversations with Mr. Baker before
7 his retirement about the need for the organization and my
8 thoughts on it as I was doing that review, and then on into
9 the late fall when I reported to Mr. Evans then, and I also
10 gave him my impressions and my thoughts on whether the
11 organization was needed and what structure it should take.

12 We did not have a contract, and we had been going
13 on for some period of time, it did not appear we were going
14 to get a contract any time soon even though we were
15 negotiating again, but my decisions were being made on what I
16 saw, whether or not we had an incorporated entity or not,
17 what would be the role of that area.

18 Q. Okay. You mentioned that you were going through
19 this ongoing process of review. Did you ever talk to Mr.
20 Hobby about the necessity for the contract administration
21 group?

22 A. Yes, sir, I did.

23 Q. Tell the court if you would about those
24 discussions.

25 A. Those discussions, some of them I guess the first

1 impression I had was probably in the spring. By then I was
2 still very open-minded because we were still in the very
3 early stages of negotiations at that point as to what we
4 would need, and we were also starting to run into problems
5 with negotiations with Oglethorpe, but later in the year when
6 we started negotiations up in earnest again I gave it more of
7 a review, and I was -- you know, we had a Southern Services
8 setup, we didn't have that role there -- I was already
9 responsible, I being bulk power markets, responsible for the
10 interface with the co-owners, to how it was going to fit in,
11 this whole organization, with this relationship which we were
12 already responsible for.

13 We were already administering as I said some thirty
14 or forty contracts with the co-owners and other entities, so
15 I had expressed all these to Mr. Hobby, and I was playing
16 somewhat a devil's advocate with him and his staff at times
17 as to "Explain to me, I want to hear you, I want to be
18 objective why you are needed? What is your function? What
19 should your function be?, but let's not duplicate things. Be
20 fair and come in objectively."

21 A. Did you think there was a need to have a separate
22 interface between Georgia Power and the co-owners in addition
23 to the interface that your group already had at that time?

24 A. Not a separate total interface as that's the only
25 interface they should have. The way we functioned in my role

1 as administrator of these contracts and as the joint
2 committee member, and we had Mike Harrell who was also in the
3 accounting officer, the chief accounting officer, was another
4 rep.

5 We needed those contacts to occur where the work
6 was being done for informational purposes and communication,
7 but the official path had to be through the joint committee
8 member, which was myself. That needed to be the path.

9 If we had set up another one now, we were
10 separating that outside, and that was going to give multiple
11 paths and some confusion I think that would come down the
12 road.

13 Q. You mentioned that you had several contracts that
14 your organization was responsible for administering. Did you
15 have within bulk power or -- I'm sorry, was there in the
16 company a separate group to administer contracts that you
17 were responsible for under bulk power?

18 A. No, sir. We had the administration. Accounting
19 had a fixed joint asset accounting where they did the
20 accounting function there for the joint-owed units, but there
21 was no separate entity set up anywhere that had the overall
22 responsibility other than the responsibility given us to make
23 sure things happened that were supposed to happen in the
24 contract time-wise and that type thing.

25 Q. In your opinion in 1989 as you developed your

1 thinking did you see a need for there to be separate group in
2 the company to administer a contract between Georgia Power
3 and SONOPCO if that contract ever came into existence?

4 A. No, sir, I didn't. My determination after hours of
5 talking with Mr. Hobby and his people, and accounting staffs
6 and in fact SONOPCO people, I did not see a need for a
7 separate organization.

8 I did possibly see a need for some of the staff,
9 not all the staff he was talking about, to be included as
10 part of the bulk power market services area which already
11 existed for administration of the contracts, and this could
12 be easily picked up by them, which was really understaffed
13 already, and we could take on this additional responsibility
14 in that area and use some of the staff there.

15 Q. You said that you received some input from people
16 in Mr. Hobby's organization. Let me get you to turn to Tab 7
17 of Respondent's Exhibit 18 and ask you to identify that
18 document for the record, please.

19 A. Yes. This was provided to me by Mr. Hobby and his
20 staff in either late November or early December in response
21 to my request again that I wanted to make sure I understood
22 where all of the possible interfaces were that existed, who
23 needed to be interfacing between SONOPCO and Georgia Power
24 Company.

25 Q. And did you have a meeting with Mr. Hobby and his

1 staff to consider the information that was placed in this
2 memo?

3 A. Yes, sir, they came to my office and we discussed
4 it.

5 Q. And can you tell the court generally what was
6 discussed in that meeting?

7 A. In that meeting the staff -- and Mr. Hobby was late
8 as he said coming to the meeting -- defended essentially, I
9 really pressed them on "Why are you needed? If we've got
10 accountants already talking, and budget people already
11 talking to each other between here and SONOPCO, and SONOPCO
12 has staff to do this, tell me the real reason," and I really
13 pressed as I said playing the devil's advocate as to "Why are
14 you needed? I'm not here to eliminate you, I just need to
15 know, I need to get in my mind fixed why this function is
16 necessary and would be necessary with SONOPCO set up," and we
17 went through these various areas explaining why they thought
18 they were necessary.

19 Q. At what point did you make a formal recommendation
20 to your superiors about the elimination of Mr. Hobby's
21 position?

22 A. I would guess the formal recommendation, though I
23 had had discussions before and I had given my thoughts on the
24 idea, was probably -- well, they didn't report to me until
25 January 1st, and I gave my formal recommendation then,

1 actually went through with the process, but prior to that in
2 December and early November I was already informing Mr. Evans
3 that I did not see the need for a high level manager, or did
4 I see the need for a separate organization to exist to
5 administer a contract if we ever got a contract.

6 Q. Did Mr. Evans agree or disagree with your
7 conclusion?

8 A. He agreed with it.

9 Q. In making your decision about the elimination of
10 Mr. Hobby's position, did you ever discuss the need for the
11 contract administration group or Mr. Hobby's position with
12 Mr. McDonald?

13 A. No, sir.

14 Q. Did you ever discuss those issues with Mr. Farley?

15 A. No, sir.

16 Q. Did Mr. McDonald or Mr. Farley ever state to you
17 that they wanted to see Mr. Hobby's position eliminated?

18 A. No, sir.

19 Q. Did they ever tell you that they wanted to see Mr.
20 Hobby fired?

21 A. No, sir.

22 Q. Did they ever say that they wanted to see him leave
23 the company?

24 A. No, sir.

25 Q. Did they ever express any opinion to you on his

1 Q. Okay. Did you read the memorandum when Mr. Hobby
2 gave it to you that day?

3 A. Yes, sir. He brought it to me, and I quickly read
4 through the memo.

5 Q. Can you tell the court about your comments to Mr.
6 Hobby about the memo on April 27th?

7 A. Yes, sir. First, this was not responsive to what I
8 had asked Mr. Hobby to do.

9 What I had asked Mr. Hobby to do as I explained to
10 Mr. Hobby is I was wanting to get a better feel of the
11 relationship between Georgia Power and SONOPCO as we started
12 to formulate this relationship, and was very similar to what
13 I finally got something similar in November from his staff
14 where he actually gave me who contacted who, which
15 departments interfaced, so the memo was not responsive in
16 what I was asking for.

17 However, reading through the memo I pointed out to
18 Mr. Hobby at that point in time there were several problems
19 in the memo that I saw with the memo itself, such as
20 responsibility as agent.

21 As I explained earlier, Georgia Power had already
22 made bulk power markets the interface with the co-owners,
23 that was our role, but what he pointed out in here of not
24 knowing about some things going on such as the executive
25 quarterly review meeting I was aware of, so this wa not

1 something secret or anything, I was aware of that.

2 He was concerned because his organization was not
3 involved in it, but there was not a SONOPCO. Pat McDonald
4 still was a Georgia Power employee, most everybody at SONOPCO
5 that worked on Georgia units was Georgia employees, so there
6 was not a specific relationship or reporting position to
7 bring this through Mr. Hobby and his group.
8 I was aware of it, though, as the joint committee member and
9 being the negotiator with the co-owners.

10 There were some other areas in here that I had told
11 him that was just incorrect, and Dan Smith had mentioned to
12 me. In fact we had written a memo back to Dan Smith I think
13 we talked about, or he mentioned or raised that they inquired
14 in the joint committee subcommittee meeting about the
15 reporting relationship. We had responded, but I had never
16 heard that from Mr. Kilgore who was Mr. Smith's superior at
17 Oglethorpe in our negotiations. He had never raised that
18 issue with me as to who Mr. McDonald reported to, so I had
19 seen a lot of things in the memo that I thought I addressed
20 at that time with him that were inaccuracies, besides the
21 memo not being responsive to what I needed to help formulate
22 in my mind what the relationship organizationally and
23 interface should be between Georgia Power and SONOPCO.

24 Q. Let's back up to that point just a second, the
25 reason for asking for the memo. Did you tell Mr. Hobby that

1 position resulted in his employment becoming an impacted
2 employee.

3 Mr. Hobby was quite familiar with that, as he had
4 eliminated several positions himself and part of
5 reorganization had gone through the same process where he had
6 found other employment for the people in those jobs or
7 offered outplacement packages.

8 Q. Did you ever tell Mr. Tom Kilgore at Oglethorpe
9 Power that you were going to eliminate Mr. Hobby's position
10 in advance of telling that to Mr. Hobby?

11 A. No, sir, I did not.

12 Q. Did Mr. Hobby ever confront you with the accusation
13 that he had learned indirectly through Mr. Kilgore or Mr. Dan
14 Smith that he was going to have his job removed or
15 eliminated?

16 A. Yes, sir, he inquired from a conversation he had
17 with Dan Smith about something to that effect, and I don't
18 remember exactly how he phrase it, but what I explained to
19 Mr. Hobby in a meeting with Mr. Kilgore in our negotiating
20 sessions, SONOPCO was one of those issues that we were
21 discussing at the time, and I had told him that where I had
22 come down to as far as staffing at Georgia Power is I did not
23 believe we needed expertise in the nuclear operating area on
24 staff at Georgia Power Company, that was what we centralized
25 the function for at SONOPCO, and it would be redundant to

1 staff at Georgia Power and to set up this organization and
2 contract with an organization for the nuclear expertise.

3 The way I explained that to Mr. Hobby is I had just
4 gone through a reorganization of a system planning function
5 where we centralized the system planning function in
6 Birmingham, and if I had kept system planning expertise, one
7 or two on the staff and moved the rest of them to Birmingham
8 where the planners are going to plan, so you would have had
9 planners looking for something to do and they would have
10 created work, and then we would have had the same issue
11 again, a turf issue, and it just didn't make sense and it
12 didn't seem the most efficient way to do.

13 That was what discussion I had with Mr. Kilgore, he
14 was inquiring as to what we were thinking, and that was my
15 thoughts on the subject that I had shared with him, because
16 he was looking at his own staffing as to what he was going to
17 have at Oglethorpe.

18 Q. And when you made that comment to Mr. Kilgore about
19 not retaining in Atlanta expertise in the operation of
20 nuclear plants, were you referring to Mr. Hobby?

21 A. No, sir, I wasn't even thinking of Mr. Hobby at
22 that time

23 In fact, I informed Mr. Hobby at that meeting that
24 I had no problem with his performance and what he was doing,
25 and at that point even though I was looking at the whole

1 organization and I had shared with him already the concern I
2 had with the high level job such as that in a separate
3 organization, he was aware of that already, that I had
4 already raised that issue with him.

5 Q. Let's talk for a minute about your discussion with
6 Mr. Hobby on his outplacement package.

7 Now, when generally speaking was the first time
8 that you began to have those discussions?

9 A. It was either late November or early December, in
10 that time frame. A lot of that discussion runs together
11 right there.

12 In talking, I think it might have been one of these
13 very meetings we were talking about that I was suggesting
14 maybe that we didn't need a high level position, and
15 questioned as I said whether we needed a separate
16 organization.

17 I asked Mr. Hobby would he be interested in
18 employment at SONOPCO, and the immediate reply was no, that
19 he wasn't interested.

20 I said "Would you be interested maybe in another
21 position within one or two levels somewhere else in the power
22 generation or another area of Georgia Power Company?" "No."

23 I said, "Mr. Hobby, you're limiting my options in
24 what I'm looking at in this," and I think I mentioned to him
25 "Would you be interested in some kind of outplacement

1 BY MR. KOHN:

2 Q. Mr. Williams, let's cover the April 1989 time frame
3 when Mr. Hobby and you were discussing his memo. Had you
4 begun the process of considering to eliminate Marvin Hobby's
5 job by that time?

6 Q. No, sir, I had not. What I had begun by that time
7 was to review the relationship that needed to exist, or
8 actually investigate the relationship that needed to be in
9 place between Georgia Power Company and SONOPCO.

10 The areas I wanted to look at was what should we --
11 should we just have one central contract that Mr. Hobby
12 understood should be their contact, or should we have
13 multiple contacts, should we continue the accounting
14 contacts, the budgeting contacts.

15 I wanted to look at that in more detail since I had
16 been assigned the responsibility to negotiate the
17 relationship between us and the co-owners, and the co-owners
18 were very interested in our relationship with SONOPCO since
19 they owned a large portion of the nuclear facilities, and so
20 wanted to comfort myself on what that relationship should be.

21 Q. And had you engaged in a fact-finding process so
22 you could make a recommendation as to what or how the nuclear
23 operations contract administration should be reorganized at
24 the time Mr. Hobby submitted his April 27th memo?

25 A. I didn't look at how that should be reorganized. I

1 was looking at what their organization and function -- in
2 fact, that was what I was asking from Mr. Hobby is "What do
3 you see is your function? Where are these interfaces? What
4 should they be? Give me information there, what problems you
5 saw, whether there was dual setups, or you were not involved
6 in the loop, why were you not involved?"

7 I was asking SONOPCO and a lot of people there the
8 same questions. I was asking the accounting organization the
9 same type things as to what they were doing.

10 I was trying to get a feel myself of what was going
11 on, what should be going on there. As a negotiator I needed
12 to understand what the relationship was going to be.

13 Q. So you were not -- you were trying to figure out
14 how to resolve the interface problem, or were you trying to
15 figure out how to reorganize that area?

16 A. Trying to figure out what the interface should be
17 in my own mind.

18 Q. And you were engaging in a fact-finding mission;
19 correct?

20 A. That's correct.

21 Q. And you were not considering what the problems, the
22 breakdown in communications problems were; is that correct?

23 A. The breakdown in communications problem? What
24 breakdown in communications problem?

25 Q. Between SONOPCO and the nuclear operations contract

1 administration group.

2 A. I didn't know there was a breakdown in
3 communications because there -- how could there be a
4 breakdown when I'm not sure what their function was at that
5 point as far as I was concerned, because we did not have a
6 nuclear contract to administer.

7 What we were administering was a project which most
8 of the employees in that, or all the employees in that
9 project were still Georgia Power employees with the exception
10 of Services, Southern Services' employees, and if we were
11 going to go forward and have a nuclear operating contract
12 administration group at Georgia Power Company I wanted to
13 make that I understood how it would function and what its
14 responsibilities should be in context with what SONOPCO's
15 organization was going to be, and how that all fit together
16 with what we were negotiating with the co-owners.

17 Q. And Mr. Hobby then presented you with a memo --
18 Can you tell me what your conversation was to Mr. Hobby that
19 led him to give you this April 27th memo?

20 A. Yes, sir. I asked him to tell me where you saw
21 what interfaces there should be between SONOPCO and Georgia
22 Power Company, who should be talking to who, what channels of
23 communication should there be there, whose responsibility was
24 it to initiate things, give me some kind of flow background.

25 He was reluctant to ever giving that to me. In

1 fact, I had to pull it out of him in November, and I still
2 didn't get everything I wanted done, and for some reason they
3 didn't want to give me that.

4 I finally got it in November, or at least got some
5 part of it, so I was actually having to do a lot of this
6 investigation myself talking to the accounting area and all.

7 As I said, this memo didn't give me who in
8 accounting reports to who or talks to who at SONOPCO. I know
9 I've got an accounting group over at SONOPCO, and I've got
10 one here. Who's supposed to be doing what? Who's talking to
11 who there? What should that be?

12 All I got out of Mr. Hobby was that "Everything
13 ought to come through me", and I don't think that's right. I
14 don't think we can function that way, there's no way we can
15 function that way.

16 So I was doing the -- it was more of an
17 investigation on my own part as to what it should be set up,
18 and I'm not saying he was the only culprit. You've got a new
19 organization in Birmingham that thought they should have a
20 lot of things.

21 I was looking at the whole organization in the
22 hopes that when we get a contract, at the time we got a
23 contract it was ready to go and SONOPCO was incorporated we
24 would be ready to go too.

25 Q. So you were engaging in a fact-finding mission to

1 find out what the interface was, and Mr. Hobby was not being
2 responsive to that?

3 A. No, sir, he did not, not with that memo.

4 Q. And you say eventually around November he finally
5 got more responsive?

6 A. He or his staff did. I thought he told me the
7 staff, Gerald Johnson and Don Proctor prepared this exhibit,
8 whatever the exhibit number was that they provided me a note
9 on which actually got detailed into the joint accounting
10 areas, the finance areas and the operating areas.

11 Q. Now, prior to this April time frame when you were
12 trying to find out what the actual line reporting structures
13 were, hadn't Marvin Hobby expressed tremendous concern that
14 he was not getting cooperation from the SONOPCO project?

15 A. Mr. Kohn, I continued to get concerns from Mr.
16 Hobby, and frustrations as to his concerns that he was not
17 involved in certain things.

18 That was what I was trying to find out, was he
19 supposed to be involved in those things. I don't know
20 whether he should have been or not. That's what I wanted to
21 find out.

22 I was assisting him trying to help him and his
23 organization through a review process. I think we could
24 clear up all those issues. He had some ideas, some other
25 people had some ideas, that was very evident, and through all

1 this testimony we've had today.

2 My effort was to resolve a lot of those areas by
3 looking at the organization, the interfaces, what they should
4 be, and let's make a decision on what should be there.

5 Q. Well, why were you doing that, and not George Head?

6 A. I was doing that because I was responsible for the
7 interface with the co-owners which had intervened into the
8 SONOPCO proceeding.

9 I was responsible for administering as I said some
10 forty contracts already in my area. I took it on myself as a
11 negotiator to look at and see if I could assist in that area.

12 I had talked with Mr. Head. In fact, Mr. Hobby and
13 I sat down with Mr. Head and he agreed that since I was
14 responsible for the negotiations of this and that Mr. Hobby
15 was serving on my negotiating team and the managing board
16 group and all that I could pursue of this.

17 Q. Well, you had responsibility -- there were two
18 contracts that the contract administration group was
19 administering or would be administering. One was between
20 SONOPCO and Georgia Power Company, and the other one was
21 between the joint owners and Georgia Power Company; is that
22 right?

23 A. No, sir, that's wrong. The contract administration
24 group would not be administering the managing board
25 agreement. That would be administered with my department.

1 He would have no -- he wouldn't be on the board. I
2 would probably be the representative on the board, or Mr.
3 Dahlberg would decide who was going to be representing on the
4 managing board. That's with the co-owners. He wouldn't
5 administer that.

6 The contract with SONOPCO, I think that's what we
7 were looking at his group administering between Georgia Power
8 Company and SONOPCO. In the negotiations we had with the co-
9 owners it was quite obvious that we were not going to get a
10 nuclear services agreement or a nuclear operating agreement
11 if we could ever get to Phase 3 between Georgia Power Company
12 and SONOPCO without the co-owners agreeing to that
13 arrangement.

14 Therefore, I was going to be involved in the
15 negotiations due to my responsibilities at Georgia Power
16 Company.

17 I might point out that was one of the problems in
18 the memo, the very first point in there was his
19 misunderstanding of the agency role as to what his role would
20 be with the co-owners. He was not being delegated that role.

21 Q. Now, Mr. Hobby gives you this April 27th memo;
22 correct?

23 A. That's correct.

24 Q. Okay. And what did you do with it after that?

25 A. After I had my discussion with him?

1 that was going to be Marvin Hobby's job, wasn't it, to do
2 just what you said?

3 A. To manage SONOPCO?

4 Q. To approve the budget?

5 A. No, sir, I did not understand that.

6 Q. Did you ever read his job description?

7 A. Yes, I read his job description, but it's a very
8 brief description, and I don't think Mr. Dahlberg expected
9 Mr. Hobby to be the approval of the nuclear budget of Georgia
10 Power Company. I just don't believe he intended to delegate
11 that down to Mr. Hobby.

12 Q. But when SONOPCO became incorporated, at some point
13 Mr. McDonald could not directly report to Mr. Dahlberg;
14 right? He would then be with SONOPCO and Mr. Dahlberg would
15 be with Georgia Power Company.

16 A. Mr. Dahlberg would be on the board of directors of
17 SONOPCO, and I would expect that SONOPCO would submit their
18 budget to the management council and Mr. Dahlberg as they do
19 now, and Mr. Dahlberg wouldn't sit there and expect Mr. Hobby
20 to be the approval of the nuclear budget for Georgia Power
21 Company even if SONOPCO was incorporated. No, sir, I just
22 don't believe that was going to happen.

23 Q. So other than SONOPCO writing the budget, there
24 would be -- Mr. Dahlberg would just say "All right, Mr.
25 McDonald, you wrote the budget for SONOPCO and I approve it,"

1 there would be no accounting of the budget, or all the
2 accounting would just happen at SONOPCO?

3 A. I believe that's a different question than what you
4 were asking me. That would be maybe looking at a review of
5 the budget and helping present the budget to management
6 council. That's not approving the budget.

7 Q. Well, wasn't that the role of nuclear operations
8 contract administration to review the budget and then tell
9 management council to give to management council knowledge
10 and guidance as to whether the SONOPCO budget was prudent?

11 A. I think we can go back to your words because you
12 told me in the statement we go back and look at the
13 announcement that came out and it said approve the budget,
14 and we already have a difference of opinion what we think
15 that meant.

16 I think that's what I was trying to determine just
17 what was going to be NOCA as you refer to its
18 responsibilities.

19 Q. Well, then --

20 A. There was some already -- we had set up this
21 central organization with this expertise there which had a
22 budgeting function with it. Now, if you go set the same
23 thing back up at Georgia Power Company you start scratching
24 your head again what have you done, who's in charge, who's
25 doing what?

1 I think we had to work that out. That's what I was
2 attempting to do on my fact-finding as you referred to it.

3 Q. And did you fact-finding -- then you determined
4 that the problem was a conflict between Mr. Hobby and Mr.
5 McDonald?

6 A. No, sir, I never said that.

7 Q. Well, I sort of inferred it from your statement
8 that Mr. Hobby wanted to run SONOPCO that I guess Mr.
9 McDonald would take exception to that.

10 A. No. I think what we were talking about is that he
11 kept raising the concern of whether Mr. Dahlberg was in
12 charge or Mr. McDonald was in charge, and Mr. Hobby seems to
13 be the only one that keeps raising that issue about Mr.
14 McDonald.

15 Q. Okay. But after Mr. Hobby raised that issue with
16 you, you went to President Dahlberg and discussed Marvin
17 Hobby's regulatory concern; isn't that correct?

18 A. No, sir. What I discussed with Mr. Dahlberg was
19 what I was seeing as far as our relationship with SONOPCO
20 that I was looking into, what was going on in our
21 negotiations with the co-owners. That's what I discussed
22 with Mr. Dahlberg.

23 Now, as far as the memo went, I didn't go through
24 the memo in detail with Mr. Dahlberg. In fact, I'm not sure
25 whether I showed him the memo.

1 yes.

2 Q. And they were reporting to Mr. Adams until the
3 management council reorganized and instructed you on the
4 first of 1990, the beginning of 1990 that Mr. Hobby would
5 start reporting to you at that point?

6 A. I don't know the management council. Mr. Evans
7 called and said that he and Mr. Adams had met and talked to
8 Mr. Dahlberg and that beginning January 1st that the nuclear
9 operating contract administration group would report directly
10 to me.

11 Q. And at the time you got that information, you had
12 already determined that you were going to eliminate Marvin
13 Hobby's job the day he started to report to you?

14 A. I think I had already told him that that was my
15 leaning, yes, and going to be my recommendation. He was
16 aware of that.

17 Q. Okay. So it was just a matter of needing to
18 formally transfer Mr. Hobby to you so you personally could
19 eliminate the job? Why didn't Mr. Adams just eliminate it?

20 A. I was not a party to that decision. I had already
21 been making my recommendations as to what I thought was
22 needed.

23 I think Mr. Baker before his retirement and Mr.
24 Adams now in a discussion had all been saying at some point
25 down the road that this function, the more information that

1 we were finding in these fact-finding missions and what was
2 going on in the negotiations more properly belonged in the
3 bulk power markets organization and not where it was over in
4 the power generation area, so I think we had all been
5 anticipating this, and Mr. Hobby knew that I thought at some
6 point, and I told him that, and he believed that too, that he
7 would be reporting to me, or the nuclear operating contract
8 administration section would, yes.

9 Q. And you were playing an informal role about what
10 you were going to do with nuclear operations contract
11 administration group, and you were not advising Mr. Hobby of
12 what you were going to do during --

13 A. I was being very candid with Mr. Hobby. I wasn't
14 pulling any punches, I was telling him what I believed, and I
15 think that was the only fair thing to do, that I wasn't going
16 to have this, this is what I believed, and I was going to let
17 him know about it.

18 That's how I asked him about "Would you be
19 interested in a SONOPCO job or some other job?"

20 I might point out that when it moved over, it's a
21 20 Level job now, but when it moved over it was no longer.
22 I think probably the 20 came because as you mentioned
23 yesterday in your own direct testimony that part of that was
24 the fact that it was an assistant to a senior VP.

25 I am not a senior VP, so when it moved over there

1 I'm not sure it carried that weight any more, and whether it
2 would stay at the 20 Level even if I kept the job, so there
3 was a lot of issues being looked at.

4 Q. And did you feel when you discussed the April 27th
5 memo with Mr. Hobby that he was accusing SONOPCO of
6 something?

7 A. Accusing?

8 Q. Yeah.

9 A. No, I don't think -- I don't believe I used the
10 word "accusing." I think he had some frustrations as he
11 would in an organization that wasn't quite clear what the
12 organization's role was. There was conflicting ideas on the
13 role. I think he was frustrated in some areas, yes.

14 Q. But didn't you think Mr. Hobby wrote this memo to
15 accuse SONOPCO of wrongdoing in that they wouldn't cooperate
16 with him?

17 A. No, sir, I never saw it as an accusation.

18 Q. Let me show you your deposition, and if you would
19 read the question and answer beginning on Line 18 on Page 32
20 up until Line 5 on the following page.

21 A. "Did you think this memo could adversely affect
22 future -- if it had gotten into the hands of Oglethorpe did
23 you think the memo could adversely affect perhaps SEC
24 regulation should the SONOPCO organization not be formed, or
25 the SONOPCO corporation not be formed?"

1 referring to, your Honor.

2 THE WITNESS: I can still tell you from memory.

3 JUDGE WILLIAMS: A witness is entitled to testify
4 based on his own personal memorandums or notes. I mean
5 you're entitled to look at it if you want to look at it.

6 If he's using something to help him recall, that's
7 permissible except that you do have the right to look at what
8 he's using to help him recall.

9 MR. KOHN: All right, sir.

10 JUDGE WILLIAMS: Continue.

11 BY MR. JOINER:

12 Q. I believe, Mr. Boren, my pending question was
13 whether you had an occasion to discuss the decision to
14 eliminate the position of general manager of nuclear
15 operations contract administration with Fred Williams and
16 Dwight Evans in the fall of 1989.

17 A. Yes, sir.

18 Q. Who was responsible for making that decision, Mr.
19 Boren?

20 A. Mr. Williams was.

21 Q. And what were the reasons as you understood them
22 for the decision to eliminate the position?

23 A. When we established the position back at the end of
24 1988 -- I believe it was the end of '88, it may have been the
25 beginning -- we did that on the assumption that we would have

1 a contract for this manager to administer.

2 Here we are almost 1990, the contract has not come
3 about, and we've realized that the reason we established the
4 job just wasn't there, and that's the primary reason that we
5 were looking at eliminating the job, and the other
6 miscellaneous requirements for the job were kind of being
7 handled through the other normal functions of the company.

8 Q. Mr. Boren, why was it that you were being involved
9 in those discussions and in the consideration of whether hits
10 position should be eliminated?

11 A. We had kind of a standard policy that when we get
12 down to those types of jobs, the major areas or whatever,
13 that I would work with whoever the vice president and the
14 management council member is making sure we all understood
15 the guidelines we used to address eliminating jobs, making
16 sure that Fred knew what type of alternatives he had
17 available and so forth.

18 Q. You mentioned the type of alternatives that would
19 be available. What were the alternatives as you understand
20 them that were presented to Mr. Hobby?

21 A. Mr. Williams as I understood it presented three
22 different alternatives to Mr. Hobby.

23 The first alternative was to help him locate a
24 comparable level job at SONOPCO, which he rejected.

25 The second alternative was to help him find another

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME III</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Thursday, October 25, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

1 progressing with regard to the co-owners of Plants Hatch and
2 Vogtle, and one of those co-owners' objection at the SEC is
3 why we have not yet gotten approval for the formation of the
4 subsidiary, and that ongoing negotiation and what to do about
5 that was a major part of it, and it was my understanding that
6 and just a general "How is it going?" were the purposes of
7 the get-together.

8 Q. At that May 5 meeting, Mr. Farley, was there any
9 discussion of the nuclear operations contract administration
10 group or of the need for having such a group?

11 A. There was some discussion. It was not a major part
12 of the dialogue, but there was some discussion of it.

13 Q. And if you will, Mr. Farley, tell the court what
14 that discussion was.

15 A. The major aspect of it had to do with the proposal
16 for adding -- and I've forgotten whether one, two, three --
17 but adding some job authorizations for that group who would
18 be nuclear engineers or people of that level, and I was asked
19 what I thought about that, and I expressed my opinion of what
20 I thought about the desirability or the lack of desirability
21 of doing that.

22 Q. What was your opinion, Mr. Farley?

23 A. It was my opinion then, and still is that if the
24 Southern system is to achieve the economies and the
25 management approach that was desired in the formation of a

1 Southern Nuclear Operating Company group that it would be an
2 unnecessary expense and a duplication to set up a group that
3 would oversee and overview the decisions that were being made
4 by the nuclear operating group.

5 This is a problem that The Southern Company, and I
6 presume other organizations tend to have in that if you
7 assign responsibility to a group, and then you set up another
8 group to oversee whether that group is doing it properly,
9 then you wind up with duplication, you wind up with an
10 adversarial relationship, and if you don't like the way that
11 the group is doing its work you ought to get another group,
12 but don't set up competing groups.

13 We have had experience with this within the
14 Southern system on other areas, and I expressed the view that
15 we would simply be adding people in a duplicative role, and
16 that if Georgia Power or Alabama Power for that matter were
17 not satisfied with the staffing, then we ought to change the
18 staffing, but let's not duplicate it.

19 That was in general the opinion that I expressed.

20 Q. Mr. Farley, was there any discussion in that
21 meeting of any complaint or concern of Mr. Marvin Hobby to
22 the effect that his group was not getting sufficient
23 cooperation from the SONOPCO project?

24 A. No, sir, I recall no such discussion.

25 Q. Mr. Farley, let me show you a group of documents

1 nuclear organization.

2 Q. And that's because Mr. Dahlberg was just about to
3 increase Mr. Hobby's staff I think you testified by three
4 individuals or something, and you had learned about this?

5 A. It was not my understanding that Mr. Dahlberg was
6 about to increase the staff. It was my understanding that
7 that was under consideration.

8 I didn't know what Mr. Dahlberg was going to do or
9 not do, and he didn't indicate to me what he would do or not
10 do.

11 Q. Okay. So basically the sum and substance of the
12 discussion was Bill Dahlberg saying to you, Mr. Farley, "Hey,
13 I'm about to consider expending a lot of resources to get
14 this contract administration group up and operating," and you
15 respond saying "Hey, wait, we could do that just as well over
16 at our side, so why don't we just transfer the function over
17 to SONOPCO?"

18 A. No, sir, that was not the way the conversation went
19 at all.

20 Mr. Dahlberg had before him as I understood it a
21 request from Mr. Hobby for some additional personnel, and Mr.
22 Dahlberg just asked me what did I think about increasing some
23 personnel for a group that would interface with Southern
24 Nuclear, and sort of translate what Southern Nuclear would be
25 doing to other parts of Georgia Power Company, and my

1 response was that I thought that would lead to -- either be
2 or would lead to duplication, and if there was a problem we
3 ought to address the problem rather than just adding more
4 personnel.

5 Q. And what was the problem?

6 A. I was not aware that there was a problem, and to my
7 knowledge there wasn't a problem, except I thought there
8 would be a problem if we set up a duplicating staff to
9 oversee what another group was doing.

10 Q. So it was basically a duplication of efforts, and
11 the meeting was to decide either whether SONOPCO was going to
12 do that or Georgia Power Company, being they were duplicating
13 each other?

14 A. That was not what the meeting was about. This
15 subject came up during the course of the discussion, but as I
16 said earlier I don't think that was the reason for the
17 meeting.

18 I can't tell you why Mr. Dahlberg asked me to come
19 by his office for a sandwich. That's some thing he'd have to
20 tell you, but that was not my understanding of the purpose of
21 the meeting.

22 Q. Now, you're involved with negotiating contracts on
23 behalf of SONOPCO; is that correct?

24 A. I am involved among others with some contract
25 negotiations, including the undertaking to try to work out an

1 dealing with Alabama or Georgia in terms of his role as
2 an officer of those companies, which I'm not an officer of.

3 Q. And the nuclear operations contract administration
4 group, or a similar group that would be in SONOPCO would be
5 in the administrative area?

6 A. We don't have a similar group to what I understood
7 the contract administration group was to be.

8 We don't have quite that kind of group, because I
9 understand they were to be almost a general group to oversee
10 what it was we were doing in most every function.

11 Q. And the group that's at SONOPCO which currently
12 oversees what you're doing, preparing budgets and monitoring
13 performance, that's all the administrative group; correct?

14 A. Well, no, sir. I don't want to leave it that we
15 have what I understood Mr. Hobby was proposing. That's not a
16 contract administration group.

17 There is no contract to administer in that regard
18 because we are not yet a corporation, we don't have a
19 contract, so in the sense of monitoring everything that the
20 Southern Nuclear group does as a group with Hatch and Vogtle
21 we don't have that.

22 We are a line management organization at those
23 plants with support from technical and administrative sides,
24 and there isn't a contract administration group like that,
25 there just isn't.

1 Q. Now, at the May 5th meeting did you hear that a Mr.
2 Mike Barker wanted to leave your side and go over to work
3 with Mr. Hobby?

4 A. I don't recall hearing that.

5 Q. Do you know who Mr. Mike Barker is?

6 A. Yes, and I do understand that Mr Barker would have
7 preferred to be in Atlanta rather than in Birmingham, so it
8 would not surprise me, but I did not hear that at the May 5th
9 meeting.

10 I did know he would have liked to have had a
11 transfer to Georgia.

12 Q. And Mr. McDonald played an active role in stopping
13 Mr. Barker from transferring over to Mr. Hobby's group;
14 correct?

15 A. Not to my knowledge. He may have, but not to my
16 knowledge.

17 Q. Do you know who made the final decision as to
18 whether Mr. Barker would be allowed to transfer from the
19 SONOPCO project over to Mr. Hobby's group?

20 A. I assume Mr. Dahlberg made the decision on Mr.
21 Baker, but you're asking me about an area in which I'm not
22 familiar because I don't know whether Mr. Barker applied for
23 a transfer or not.

24 I don't even know whether there was a job for him
25 to transfer to.

1 the issues would be resolved and SONOPCO would be formed in a
2 relatively short period of time?

3 A. That's correct.

4 Q. Mr. McDonald, did you play any role at all in the
5 formation of the nuclear operations contract administration
6 group at Georgia Power Company?

7 A. No.

8 Q. Were you consulted in any way about the formation
9 of that group?

10 A. No.

11 Q. As you later came to understand it, Mr. McDonald,
12 what function was that group to perform?

13 A. My understanding was that when we formed SONOPCO
14 and established a contract with the co-owners that that group
15 would represent Georgia Power Company's administration of the
16 contract for the services which we performed, would perform.

17 Q. With that in mind, Mr. McDonald, would the nuclear
18 operations contract administration group have had any
19 function to perform if it turned out that SONOPCO was not
20 incorporated and there was no operating contract that was
21 entered into among SONOPCO, the power company and the co-
22 owners?

23 A. Not that I know of.

24 Q. Okay. Mr. McDonald, there's a set of documents up
25 here. Let me direct your attention to -- Mr. McDonald, I'm

1 was Mr. Hobby ever excluded from any meeting because of a
2 request you made?

3 A. No.

4 Q. Did you ever request that he be excluded from
5 quarterly review meetings with the joint owners?

6 A. No.

7 Q. Let me direct your attention now, Mr. McDonald, to
8 the SONOPCO budget.

9 Did Mr. Hobby or the nuclear operations contract
10 administration group have any responsibility for the SONOPCO
11 budget?

12 A. There is not such a thing as a SONOPCO budget. You
13 may be referring to the Georgia Power budget being developed
14 by the Georgia Power staff in the SONOPCO project building,
15 and in that case -- Please state the question again.

16 Q. Well, with that correction to my question, did the
17 nuclear operations contract administration group, Mr. Hobby's
18 group, did they have a responsibility for the Georgia Power
19 Company's nuclear operations budget which was developed and
20 presumably submitted to you for approval and then presumably
21 submitted by you to Mr. Dahlberg for approval?

22 A. No.

23 Q. They didn't have any responsibility for that.

24 A. No.

25 Q. Mr. McDonald, did you at some point establish a

1 expect that SONOPCO would be incorporated?

2 A. We expected it was going to be incorporated
3 momentarily, some time in January.

4 Q. Okay. And, Mr. Head, if SONOPCO couldn't be
5 incorporated and if there was no operating contract between
6 Georgia Power and the SONOPCO corporation, would there have
7 been anything for the nuclear operations contract
8 administration group to do?

9 A. This was never really discussed, but I would see no
10 reason there would be anything because we had no contract to
11 administer, so we didn't have anything to operate.

12 Q. Okay. Mr. Head, I want to direct your attention to
13 a document which is Tab 3 of Exhibit R-18, a memorandum dated
14 April 27th from Mr. Hobby to Mr. Williams, then I want to ask
15 you some questions about the memorandum.

16 First let me ask you, Mr. Head, when was the first
17 time you saw this memorandum?

18 A. I saw this memorandum on April the 27th.

19 Q. All right, sir. And when was your last day in the
20 office at Georgia Power Company?

21 A. April 28th.

22 Q. Approximately what time of day, if you remember, on
23 the 27th of April did Mr. Hobby show you the memorandum?

24 A. As I recall, it was early in the morning, somewhere
25 around 7:30 I would think.

1 doing for us directly.

2 Q. Okay.

3 A. And of course his opinion was that we didn't need
4 that function.

5 Q. Was there any proposal or suggestion made at that
6 meeting to the effect that Mr. Hobby and his group should be
7 incorporated into the SONOPCO project?

8 A. Yeah, Mr. Dahlberg's response to Mr. Farley was
9 that, you know, that "We really don't need that, and why
10 don't you take these people in SONOPCO."

11 Q. Okay. Was there any decision on that subject?

12 A. No, there was no decision. It was a matter that
13 was put on the table for future discussion.

14 Q. Okay. Now, in that May 5th meeting, or whenever
15 the meeting occurred, but the meeting with Mr. Dahlberg and
16 Mr. Farley at which you discussed these matters, was there
17 any discussion there about the April 27th memorandum from Mr.
18 Hobby to Mr. Williams?

19 A. No. I never -- I was not aware of the April 27th
20 memorandum at the time of that meeting, and in fact --

21 Q. When did you become aware of it?

22 A. Fred Williams some times later mentioned the
23 memorandum to me, but he was unable to show me a copy of it
24 because he didn't have a copy, and the only time that I ever
25 saw the memorandum was in your office when you showed me a

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME IV</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Friday, October 26, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

1 versus the SONOPCO project.

2 Q. All right. Now, you gave Mr. Williams this memo
3 expressing all the problems that you had. Did Mr. Williams
4 go over those problems with you in that memo?

5 A. We went down the list of items, but again the
6 discussion was mainly on the interface issue, not so much the
7 individual items.

8 Q. Was the discussion centered around the reason why
9 Mr. Williams couldn't perform the nuclear operations contract
10 administration function at SONOPCO?

11 A. I really don't understand the question.

12 Q. Was the focus of Mr. Williams' statements in the
13 beginning of the meeting why is it that nuclear operations
14 contract administration function couldn't be performed in
15 Birmingham?

16 A. It was not whether why it could be performed there
17 or at Georgia Power, it was he was more or less asking us to
18 justify why it should be performed at Georgia Power versus in
19 Birmingham at the SONOPCO project.

20 Q. And that was not the understanding of why you
21 entered that meeting?

22 A. No, it was not.

23 Q. And Mr. Williams' statement to you to justify the
24 existence of your organization took you off guard?

25 A. Initially, yes, but it was a good point he made



DATE ISSUED: NOVEMBER 8, 1991

Case No.: 90-ERA-30

In the Matter of

MARVIN B. HOBBY,
Complainant

v.

GEORGIA POWER COMPANY,
Respondent

Michael D. Kohn, Esquire
David K. Colapinto, Esquire
Kohn, Kohn & Associates
For the Complainant

James Joiner, Esquire
William N. Withrow, Esquire
Troutman, Sanders, Lockerman
For the Respondent

Before: JOEL R. WILLIAMS
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under the employee protection provision of Section 210 of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §5851, and the regulations promulgated thereunder, 29 C.F.R. Part 24.

The Complainant filed his initial complaint under the Act on or about February 6, 1990. This was supplemented on February 28, 1990. On March 26, 1990, the Acting Regional Director determined that the Complainant had been discriminated against for engaging in activity protected under the ERA and called for his restoration to his former position. The Respondent filed a timely request for a hearing. They also filed a complaint with the Secretary of Labor contending that the March 26, 1990 determination was made without their having been afforded a reasonable opportunity to participate in the investigation. Thereafter, the case was reconsidered by the District Director, Wage and Hour Division, based on additional information furnished by both parties. On May 25, 1990, the District Director amended the prior findings to the effect that the elimination of Complainant's job was not based on his having engaged in any

It was not until some six months after the April 27 memo that the Management Council determined that the Complainant had no potential with the Respondent. The witnesses who participated at this meeting have denied knowing of the memo at that time and have denied that anything stated therein influenced their evaluation. I have no reason to doubt their testimony in this regard. That their evaluation of the Complainant's abilities may have differed from earlier performance evaluations comes as no great surprise. Mr. Miller and Mr. Head, for, whom he had earlier worked, had retired from the company. The Complainant did not hold Mr. Miller's successor, Mr. Dahlberg, in high regard and the feeling may well have been mutual. Furthermore, the evaluation was based on his performance in a different position. Mr. Baker was concerned that the Complainant had not fulfilled his responsibility in this job of gaining cooperation from SONOPCO. Neither Mr. McDonald, who is the only company executive to have been identified as having attended the January 2, 1989 meeting, nor Mr. Williams, who is the only executive to have acknowledged seeing the April 27, 1989 memo, participated in this management council meeting.

The decision to terminate the position of manager of NOCA, which Messrs. Evans and Williams had considered for some time, was finalized in the November/December 1989 time frame. The exact date is unimportant. The Complainant knew that the decision had been made or was in the making when he met with Mr. Williams in late November. This should not have come to any "great surprise" to him in light of the predictions he had made to Admiral Wilkinson in his June letter. Considering (1) that Mr. Head, who had sponsored the formation of NOCA, had retired; (2) that Mr. Baker, was not totally convinced as to the necessity for NOCA from its origination but went along with it in order to give the Complainant something to do; (3) Mr. Farley expressed an opinion to Mr. Dahlberg in May 1989 that NOCA was a needless expense and at odds with the purpose for which SONOPCO was formed (4) that the following month, Mr. Dahlberg expressed doubts to Mr. Barker as to the continued need for NOCA; (5) that Dwight Evans, who had not been involved in the decision to form the NOCA group, felt that they did not need a high-level position to interface with SONOPCO but should interface with them at multiple points in a manner similar to what is done in other areas; (6) that after several months of considering the matter, Mr. Williams, who also had no input into NOCA's formation, decided that there was no need for a high level manager or separate organization to administer a contract if it ever came to fruition; (7) that the incorporation of SONOPCO had been delayed beyond expectations; and (8) that there was a general reorganization of the company at the time with other executive

and/or managerial positions being eliminated as cost-saving measures, I find that the decision to eliminate the position of manager of NOCA was in no way related to the Complainant's participation in the January 2, 1989 meeting or the concern raised in his April 27, 1989 memorandum as to from whom Mr. McDonald receives his management direction for operation of the Georgia Power nuclear plants. I find that, instead, the decision to eliminate the position was fully justified as a measure to operate the Respondent's nuclear program more economically and efficiently.

I find further that the change of the Complainant's office, the revocation of his executive parking privileges and badge and his restriction to certain floors of the headquarters building was not in retaliation for his having filed the instant complaint but was a justified security measure. As his position had been officially terminated and as he had rejected the possibility of a transfer to another position at SONOPCO or Georgia Power's headquarters, his ultimate departure from the company was a forgone conclusion at the time. He had been notified by Mr. Williams on February 2, 1989, four days before his complaint was filed, that his office would be moved. He had been transferred to Mr. Williams' supervision and his new office was on the same floor as his new supervisor. He had been observed with unidentified and apparently unauthorized persons in the executive parking area. That Mr. Williams' concern over the Complainant's shredding of documents may have later been proven to him to be unjustified does not mean that it was not a genuine concern when he first learned of the same. The February 6, 1989 initial complaint indicated that the Complainant had a copy of the April 27 "confidential" memo in his possession which demonstrates to me that concern over his possibly compromising other confidential company documents was well founded.

Conclusions of Law

As a preliminary matter, I note that the Respondent raised an issue as to the timeliness of the filing of the complaint in this case for the first time in its post-hearing brief. Pursuant to 29 C.F.R. §18.1, in the absence of any contrary provisions in the ERA, its implementing regulations and the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, the Federal Rules of Civil Procedure are applicable to the instant proceedings. Cf. Cooper v. Bechtel Power Corporation, 88-ERA-2, (Decision and Order of the Secretary, October 3, 1989). Rule 8(c) provides that statutes of limitations are affirmative defenses. Failure to assert such a defense in a Respondent's pleadings is considered a waiver of the

IV. NOCA's Function

Mr. Kohn accuses Williams of misrepresenting NOCA's function, selectively quoting excerpts of Williams' response to a question raised by Mr. Merschoff. What Williams really said is as follows:

MR. MERSCHOFF: I have two questions on that. One, you said the purpose of NOCA was to oversee a contract between Southern Nuclear and Georgia Power. Was that the sole purpose of it?

MR. WILLIAMS: That's correct.

MR. MERSCHOFF: And you say that contract isn't in place yet. At what point was NOCA dissolved as an organization?

MR. WILLIAMS: NOCA was dissolved when I eliminated the job in the beginning of 1990. I absorbed the other positions within the existing bulk power contracts administration area that was already at that point in time administering and managing all the joint owner contracts, our operating agreement already at that time.

MR. MERSCHOFF: When I read the decision, I thought there was a manager put in place in that position after Mr. Hobby.

MR. WILLIAMS: No. Let me straighten that out, too. What I did was essentially put the function underneath an existing manager, a manager level 17, three levels below, who was administering at that point in time some 40 contracts between us and the joint owners. A level 17 manager took over. In fact, it was just moved in his area, which is where I determined it should have been in the first place.

MR. MERSCHOFF: Was it then subsequently dissolved?

MR. WILLIAMS: NOCA was dissolved?

MR. MERSCHOFF: Is there a NOCA function under this manager today?

MR. WILLIAMS: No. The staff under this manager today essentially was understaffed, anyway, because of all the contracts we had and that we were administering between us and the joint owners. As I said, it was not just the Vogtle plant. Hatch, Wansey, Scherer. We have a pump storage hydrofacility that is being managed in the same group. We have three new power supply

agreements, and all of those have multiple contracts in them. That was a department that existed before NOCA was ever formed. We were already billing the co-owners, doing the budgeting with the co-owners on the Vogtle Nuclear Plant well before NOCA was even thought about. I was already negotiating a new arrangement between us, the nuclear managing board concept and all.

The only responsibility NOCA could possibly have would then be to administer the contract between Southern Nuclear when it became Southern Nuclear instead of a project and us at Georgia Power Company, and that would have been my department then, so it didn't make sense to put all this money and department in place just between us and Southern Nuclear when it could be done directly with the existing manager and his staff that were there. We did absorb these two positions, and they're still there and we're managing those contracts.

. . . .

. . . . Here was Georgia Power employees doing Georgia Power work, and here was a new group called NOCA that was being set up to administer a contract that didn't exist yet, trying to force themselves into something that was already functioning.

I think if you look at some of the things even raised by Mr. Hobby, we tried to include them. We tried to make sure, when it did happen, we would have them if it made sense; but during that year of my review, it just didn't make sense that this separate project needed to be there with a hundred thousand dollar a year boss and with two accountants and a secretary when for one or two of those people we could have just added them to the existing department that was already there. In fact, we didn't have to. We could have taken on the function without them, but since those people were in the position, it was good. Since I was already understaffed in that area, they picked up actually other duties, not just this project.

(Conference Tr. at 25-30).

When placed in context, it is clear that when Williams was saying that administration of the contract between SONOPCO and GPC was NOCA's "sole purpose," he was talking about the time period after he had reviewed the need for NOCA and determined that many of NOCA's intended functions were being performed by other existing GPC departments.

Thus, Williams' statement is not a misrepresentation at all. Moreover, even when not placed

in the correct context, Williams' statement is consistent with Dahlberg's ASLB testimony and the testimony of GPC's witnesses at the DOL hearing in that: 1) all of Hobby's intended functions were intertwined with the existence of a contract between SONOPCO and GPC; and 2) without a contract, NOCA did nothing more than duplicate the functions of the SONOPCO project and other GPC departments. (ASLB Tr. at 1194, 1196, 1199; Tr. at 305, 311-13, 315-17, 330-32, 368-70, 387-88, 406-12, 415, 425-27, 441-44, 446, 452-53, 467-68, 485-86, 570-71, 587-88, 597, 645, 682, 784). Hobby also corroborated this testimony when he created the Position Questionnaire, which assumed the incorporation of SONOPCO and a contract between SONOPCO and GPC, (CX. 13), and in his ASLB testimony. (ASLB tr. at 2306, 2315, 2385).

In The Matter Of:

*IN THE MATTER OF MARVIN B. HOBBY v.
GEORGIA POWER COMPANY*

*PREDECISIONAL ENFORCEMENT CONFERENCE
October 4, 1995*

*BROWN REPORTING, INC.
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Word Index included with this Min-U-Script®

ENCLOSURE 2

negotiating terms. Tom had been involved in similar
outplacement agreements. Marvin said he believed
that Pat McDonald and Joe Farley wanted to get him
out of the company, and I understood that it was
McDonald's view that NOCA nuclear expertise in
Atlanta dedicated solely to overseeing nuclear
expertise in Birmingham was not needed. What I said
there was that a group in Atlanta overseeing nuclear
expertise in Birmingham at the Southern Nuclear
project was not needed, that that would be the role
of line management at the Southern Nuclear project.
It was a view that was shared by me and others,
including Mr. Evans, my boss.

Marvin was told that if an outplacement
package could not be negotiated, his position would
be eliminated and he would be an employee impacted
by the company's downsizing. What that means is, I
tried to negotiate something with him because I told
him that his position was going to be eliminated and
if it was eliminated, he would be then under the
normal procedure for impacted employees and whatever
severance package that went with that.

He said in his Department of Labor case
that on January 10th, 1990, I told him that he would
get no support in the company from senior management

Georgia Power. Was that the sole purpose of it?

MR. WILLIAMS: That's correct.

MR. MERSCHOFF: And you say that contract
isn't in place yet. At what point was NOCA
dissolved as an organization?

MR. WILLIAMS: NOCA was dissolved when I
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at that point in time some 40 contracts between us
and the joint owners. A level 17 manager took
over. In fact, it was just moved in his area, which
is where I determined it should have been in the
first place.

MR. MERSCHOFF: Was it then subsequently

because of the April 27th memo. This is simply not
true. His memo was not a factor in eliminating the
position. In fact, until it was raised with the
Department of Labor, I had forgotten about the April
27th memo at that time.

Let me just summarize to you what I told
the Department of Labor judge during the hearing.
The memorandum and the issues in it had nothing to
do with the decision to eliminate Marvin's
position. Marvin's position of \$100,000-plus-a-year
general manager was just not justified by this job,
and I believe that everyone involved, including
Dwight Evans, Marvin, and those reporting to him
understood that, and the position cannot be
justified today.

Thank you.

MR. MERSCHOFF: Do you need access to a
phone?

MR. REYES: Let's go off the record for a
minute.

(Discussion ensued off the record.)

MR. REYES: We're back on.

MR. MERSCHOFF: I have two questions on
that. One, you said the purpose of NOCA was to
oversee a contract between Southern Nuclear and

dissolved?

MR. WILLIAMS: NOCA was dissolved.

MR. MERSCHOFF: Is there a NOCA function
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MR. WILLIAMS: No. The staff under this
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because of all the contracts we had and that we were
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in them. That was a department that existed before
NOCA was ever formed. We were already billing the
co-owners, doing the budgeting with the co-owners on
the Vogtle Nuclear Plant well before NOCA was even
thought about. I was already negotiating a new
arrangement between us, the nuclear managing board
concept and all.

The only responsibility NOCA could
possibly have would then be to administer the
contract between Southern Nuclear when it became
Southern Nuclear instead of a project and us at

(1) Georgia Power Company, and that would have had to
(2) have been my department then, so it didn't make
(3) sense to put all this money and department in place
(4) just between us and Southern Nuclear when it could
(5) be done directly with the existing manager and his
(6) staff that were there. We did absorb those two
(7) positions, and they're still there, and we're
(8) managing those contracts. In fact, one of the
(9) positions has now been eliminated, and that has been
(10) transferred to the country.

(11) I do want to clarify one thing about the
(12) officer chain in Southern Nuclear. Pat McDonald at
(13) the time, George Hairston, Ken McCoy, and Tom
(14) Beckham were all employees of Georgia Power still
(15) during this whole time. They were not removed from
(16) the Georgia Power payroll. In fact, all the
(17) employees working on Georgia projects in the
(18) Southern Nuclear operating project at that time were
(19) still Georgia Power employees, so, you know, they
(20) were still performing their functions. The only
(21) thing different, instead of moving from the
(22) thirteenth floor to the fourteenth floor, they had
(23) moved from Georgia Power's building to Birmingham.
(24) Nothing else had changed at that point in time.
(25) There was no Southern Nuclear Company, if you

(1) department that was already there. In fact, we
(2) didn't have to. We could have taken on the function
(3) without them, but since those people were in the
(4) position, it was good. Since I was already
(5) understaffed in that area, anyway, they picked up
(6) actually other duties, not just this project.

(7) MR. HAIRSTON: Thank you, Fred. I've got
(8) about ten more minutes, and then I may answer some
(9) of your questions that remain in part of my
(10) presentation.

(11) Georgia Power and Mr. Hobby litigated
(12) this matter in late 1990 before one of the
(13) Department of Labor administrative law judges, Judge
(14) Williams. Mr. Hobby testified, as did Mr. Baker,
(15) Mr. Dahlberg, Mr. Williams, Mr. Evans, Mr. Tom
(16) Boren, and others. Mr. Boren was an officer who
(17) attended the November 7th performance review meeting
(18) as well as the December 29th, 1989, management
(19) council meeting where the recommendation to
(20) eliminate Mr. Hobby's position was made. A total of
(21) about 15 witnesses testified over several full
(22) days.

(23) Why was Mr. Hobby's position eliminated?
(24) The ALJ, which is on the left, said, I find the
(25) decision to eliminate the position of manager of

(1) would. It was still Georgia Power employees
(2) functioning the same way they had. They were just
(3) over the project.

(4) We did put officers that had dual
(5) hating, which was this whole issue about reporting,
(6) in my opinion. That's the only concern that
(7) Oglethorpe ever raised with me, whether you would
(8) accept dual hating, which I believe you would,
(9) because you've had that presented to you before in
(10) other areas, and it was under my understanding that
(11) that was not a problem. Here was Georgia Power
(12) employees doing Georgia Power work, and here was a
(13) new group called NOCA that was being set up to
(14) administer a contract that didn't exist yet, trying
(15) to force themselves into something that was already
(16) functioning.

(17) I think if you look at some of the things
(18) even raised by Mr. Hobby, we tried to include them.
(19) We tried to make sure, when it did happen, we would
(20) have them if it made sense; but during that year of
(21) my review, it just didn't make sense that this
(22) separate project needed to be there with a hundred
(23) thousand dollar a year boss and with two accountants
(24) and a secretary when for one or two of those people
(25) we could have just added them to the existing

(1) NOCA was in no way related to the concern raised in
(2) the April 27th, 1989, memorandum. And you can read
(3) on.

(4) Almost four years later - that's
(5) right - almost four years later, the Secretary of
(6) Labor rejected the recommendation, the recommended
(7) decision of his own administrative law judge. His
(8) order, decision in this area is on the right of that
(9) overhead.

(10) In doing so, the Secretary basically said
(11) that Mr. Hobby's testimony was to be believed and
(12) that the testimony of the Georgia Power witnesses
(13) should be discredited. This is the exact opposite
(14) of what Judge Williams had recommended. Time after
(15) time, the Secretary, who was reviewing a cold
(16) transcript without actually seeing and hearing
(17) witnesses, rejected the credibility determination of
(18) Judge Williams.

(19) Georgia Power contends that under the
(20) circumstances presented here, this is improper, and
(21) we will appeal this decision of the Secretary.

(22) As an aside, it must first be remanded to
(23) an administrative law judge to determine the amount
(24) of compensation of Mr. Hobby.

(25) Let me just briefly go through some

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 ATOMIC SAFETY AND LICENSING BOARD

5 HEARING

6 -----X

7 In the matter of: : 50-424-OLA-3
8 GEORGIA POWER COMPANY, et al. : 50-425-OLA-3
9 : Re: License Amendment
10 (Vogtle Electric Generating : (transfer to
11 Plant, Unit 1 and Unit 2) : Southern Nuclear)
12 : ASLBP No.

13 -----X 93-671-01-OLA-3

14 Wednesday, January 4, 1995

15 Hearing Room T 3B45

16 Two White Flint North

17 11545 Rockville Pike

18 Rockville, Maryland

19 The above-entitled matter came on for hearing,
20 pursuant to notice, at 9:00 a.m.

21 BEFORE:

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

25 NEAL R. GROSS

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I N D E X

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>BOARD</u>
1						
2						
3	A.W. Dahlberg	1059	1052			1064
4			1061			1069
5	Prefiled Testimony		1061			1071
6						1079
7						1090
8						1094
9						1098
10						1098
11						1107
12						1112
13						1120
14						1131
15	Patrick McDonald	1247	1252			1248
16	Prefiled Testimony		1249			1251
17						1254
18						1255
19						1256
20						1257
21						1260
22						1262
23						1270
24						1273
25						1277

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I N D E X (CONT)

1			
2	<u>WITNESS</u>	<u>DIRECT CROSS REDIRECT RECROSS BOARD</u>	
3	Patrick McDonald		1279
4			1280
5			1283
6			1290
7			1295
8			1296
9			1302
10			1306
11			1307
12	<u>EXHIBITS</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
13	McDonald A-D	1250	1252
14	GPC-1	1250	1252
15			
16			
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1 A Mr. Baker did, yes.

2 Q And what about Mr. Head? Do you know if he
3 ever did?

4 A Not -- no, sir, he did not.

5 Q And when did Mr. Baker stop having any
6 responsibility for nuclear operations?

7 A I believe it was in -- I'd have to go back and
8 look, but I believe it was in April of 1988 when Mr.
9 McDonald was elected executive VP of Georgia Power
10 Company, he reported directly to Mr. Scherer.

11 Q And was one of the reasons for setting up NOCA
12 to keep an eye on the nuclear projects?

13 A Yes. At that time, it was a new organization
14 for us. We were transferring our general staff to
15 Birmingham, and I think all of us had a concern about
16 exactly how it was going to work. And I thought it would
17 be necessary to set up a contract group to look at the
18 performance of that organization.

19 We anticipated at that time that we would have
20 an operating contract between Georgia Power Company and
21 the nuclear organization. The contract never
22 materialized. They in effect were another department --
23 just a department of Georgia Power Company.

24 BOARD EXAMINATION

25 CHAIRMAN BLOCH: The department of who?

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1 to me, the next step down would be what I would consider
2 the management, and that was Mr. McDonald.

3 CHAIRMAN BLOCH: You used the word essential
4 -- "It is essential that Georgia Power Company be involved
5 in the operations of our units."

6 THE WITNESS: That's correct.

7 CHAIRMAN BLOCH: Had you thought about that a
8 good deal before you wrote that part of the letter?

9 THE WITNESS: Probably not that particular
10 word. You know, we were going through a change -- a
11 change in the organization. We were moving some of our
12 people from Atlanta to Birmingham. That was a new
13 situation for us. I wanted to make sure that we knew
14 exactly what was going on with the plants.

15 I thought there would be a contract that
16 spelled out how they would operate, and I thought this
17 organization would be appropriate to monitor performance
18 against that contract. And so I set up the organization
19 to do that.

20 CHAIRMAN BLOCH: Were you familiar with any
21 legal advice at that time about what your responsibilities
22 would be?

23 THE WITNESS: Not on this particular issue.
24 We did have a responsibility to the other owners of the
25 plants, and I was well aware of that. We were in

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1 THE WITNESS: That's correct.

2 CHAIRMAN BLOCH: Did you oversight ever take
3 effect at all?

4 THE WITNESS: There was some oversight. There
5 was a collection of information. There was some
6 information that was gathered, but I don't recall ever
7 receiving any reports that were unique or something that
8 added value to the process.

9 CHAIRMAN BLOCH: Please continue.

10 CROSS EXAMINATION (Continued)

11 BY MR. STEPHEN KOHN:

12 Q And, isn't it a fact that in setting up the
13 NOCA organization, that it wasn't tied just to the
14 administration of the contract, but the real task was to
15 look at the performance of the nuclear operations?

16 A That's correct, that was one of the purposes.
17 But again, if I got performance reports directly from the
18 organization, I didn't need somebody else to do that same
19 function. It would be the same as in the power generation
20 organization. You know, for the fossil plants, I didn't
21 have a separate organization to look at their performance
22 because that organization reported directly to me also.

23 Q And when you sat it up, part of their function
24 was to gather information not just about their performance
25 of the units, but also about safety factors?

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WASHINGTON, D.C. 20005

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME II</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Wednesday, October 24, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

I N D E X

WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Marvin B. Hobby	44	219	--	--

EXHIBITS:

	<u>IDENTIFIED</u>	<u>RECEIVED</u>
<u>Complainant's:</u>		
Nos. 1 thru 21	Premarked	10
Nos. 23 thru 25	Premarked	10
Nos. 27 thru 35	Premarked	10
<u>Respondent's:</u>		
Nos. 1 thru 18	Premarked	12
No. 19 - Letter 5/1/89	254	256

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Thomas J. McHenry	279	293	298	--
Alfred W. Dahlberg	302	321	361	--
Dwight H. Evans	363	376	--	--
Fred D. Williams	399	440	--	--
Thomas G. Boren	475	501	508	--
Lee Glenn	509	520	523	--
William R. Evans	525	539	--	--

EXHIBITS:IDENTIFIED RECEIVED

Complainant's:

Nos. 36 & 36-A - Dahlberg Calendar	350	352
Nos. 37 & 37-A - Williams Calendar	460	460

Joint:

No. 1 - Stipulation	398	398
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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
E. P. (Dennis) Wilkinson	544	557	--	--
Joseph M. Farley	564	579	--	--
R. P. McDonald	601	619	--	--
George F. Head	643	658	--	--
H. G. Baker	678	690	705	709

EXHIBITS:IDENTIFIED RECEIVED

Complainant's:

No. 38 - Wilkinson bio	548	548
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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Jesse P. Schaudies, Jr.	716	725	--	--
Marvin B. Hobby	764	--	--	--
Donald W. Janney	765	772	--	--
Robert P. Edwards, Jr.	776	779	780	--
Carey Don Proctor	781	785	--	--

1 Power Company, you indicated that Mr. McDonald reports to
2 you. Does Mr. McDonald take all of his management direction
3 from you with respect to the operation of Georgia Power
4 Company's nuclear plants?

5 A. That's correct.

6 Q. Now, Mr. Dahlberg, I would like to ask you to
7 describe the SONOPCO project.

8 A. The SONOPCO project was originally envisioned as a
9 separate corporation. However, now it operates without a
10 corporate identity and operates in effect as a division of
11 the company, or a division of the Southern Company.

12 It is divided now so that it has specific
13 responsibilities for Georgia Power Company as we've indicated
14 for the operation of the Georgia units, and also has a
15 separate responsibility for Alabama's units.

16 It is not yet a corporate entity and does as I say
17 operate as in effect a division of The Southern Company.

18 Q. And with respect to the operation of Georgia Power
19 Company's nuclear plants, Plant Hatch and Plant Vogtle, does
20 SONOPCO function as a division or department of
21 Georgia Power Company?

22 A. Yes. It's very similar to our fossil and hydro
23 plants which are the other type plants we have. We have a
24 senior officer responsible for the operation of those plants,
25 and the nuclear organization works basically the same way.

1 Q. Mr. Dahlberg, what was the purpose of establishing
2 the nuclear operations contract administration group?

3 A. I had talked to Mr. Head about heading up a group
4 to review what was happening in the nuclear organization. At
5 that point in time I thought that there would be a contract
6 in effect between the SONOPCO project and -- or between
7 SONOPCO and Georgia Power Company, and there would be some
8 need to administer that contract, to check the performance
9 under that contract with SONOPCO.

10 Q. Mr. Dahlberg, the contract which you referenced,
11 that's a contract that would have been executed between
12 Georgia Power and SONOPCO once SONOPCO was incorporated; is
13 that right?

14 A. That's correct.

15 Q. In your mind, Mr. Dahlberg, was there any function
16 for the nuclear operations contract administration group to
17 perform if SONOPCO had not been approved, had not been
18 incorporated, and there had been no contract executed between
19 SONOPCO and Georgia Power Company?

20 A. Well, certainly if there was no contract there
21 would have been no administration of that contract. In fact,
22 we don't have a contract today.

23 There could have been some other duties, and that
24 is just to monitor the performance of nuclear operations and
25 look at how well the plants are running, costs, and those

1 type things, and in effect the SONOPCO project does that
2 themselves, and it would have been a duplication of that
3 function that they now perform.

4 Q. At the time you issued this memorandum at Tab 2 of
5 Exhibit R-18, when did you expect to receive SEC approval and
6 to incorporate SONOPCO?

7 A. Well, again I thought it would be a matter of
8 months.

9 Q. Going now, Mr. Dahlberg, to a point in time in
10 1989, who was responsible for recommending that the position
11 of general manager of nuclear operations contract
12 administration be eliminated?

13 A. I would think it would have been Mr. Evans or
14 perhaps Mr. Williams.

15 Q. Okay. Do you know the reasons for the decision and
16 recommendation that the position of general manager be
17 eliminated?

18 A. Yes. There was not a function to be performed.
19 There was no contract, and I had determined that the other
20 things that I saw could be performed by that group, that is a
21 monitoring of performance wasn't necessary and that SONOPCO
22 did that themselves.

23 The same thing happens in the fossil and hydro. I
24 don't have, for example, a separate organization that looks
25 at the performance of that group, they do it themselves, and

1 there just wasn't a need for that position because there were
2 no functions to perform.

3 Q. Was a recommendation to eliminate the position of
4 general manager discussed in any of the management council
5 meetings in the latter part of 1989?

6 A. I'm not sure the position itself was discussed. We
7 discussed on several occasions the overall structure of the
8 organization, we looked more at the people that we had in
9 jobs and their performance, their potential and so forth, but
10 I don't think we had specific discussions about elimination
11 of positions.

12 Q. The meeting that you just referenced where
13 particular individuals were discussed and evaluated, was that
14 meeting November 7th of 1989?

15 A. I believe that's correct. It was late in that
16 year.

17 We had had an earlier meeting that had only talked
18 about the senior levels in the organization, about those
19 people and about ourselves. This was our management council
20 group.

21 I think at the meeting you referenced we talked
22 about the entire organizational structure.

23 Q. Do you remember whether or not Mr. Pat McDonald was
24 at that meeting?

25 A. He was not.

1 A. No, not in detail.

2 Q. Do you know generally what concerns are expressed
3 in the memorandum?

4 A. I would have to read it again. I'm not that
5 familiar with it.

6 Q. If you would, Mr. Dahlberg, let me refer you to
7 Page 7 of the memorandum. Half way down the page do you see
8 a paragraph "A significant concern...?"

9 A. Yes.

10 Q. Just take a moment and read that to yourself.

11 Mr. Dahlberg, was the April 27th memorandum or the
12 concern expressed there on Page 7 that I asked you to take a
13 look at discussed in the management council meeting of
14 November 7th, 1989?

15 A. No, sir.

16 Q. To your knowledge, Mr. Dahlberg, was the April 27th
17 memorandum, or the concern expressed on Page 7 a factor in
18 any way in the decision to eliminate the position of general
19 manager/nuclear operations contract administration?

20 A. No, sir.

21 Q. And did you, Mr. Dahlberg, discuss with Mr. Evans,
22 Mr. Tom Boren and Mr. Williams the reasoning behind the
23 recommendation to eliminate this general manager position?

24 A. I don't recall specific discussions other than it
25 was just an unneeded job, there wasn't a function there. I

1 dcn't remember having a lengthy discussion about it.

2 Q. Did anyone ever tell you, Mr. Dahlberg, that Mr.
3 Hobby believed that Mr. McDonald reported to Mr. Farley
4 instead of to you?

5 A. Not until these litigations began.

6 Q. Was that issue ever discussed in management council
7 meetings?

8 A. No, sir.

9 Q. Did you discuss that with Mr. Boren or Mr. Williams
10 or Mr. Evans?

11 A. No, sir.

12 Q. Mr. Dahlberg, let me direct your attention now to a
13 proceeding brought by Mr. Fuchko and Mr. Yunker under the
14 Energy Reorganization Act.

15 Are you familiar at all with that proceeding?

16 A. I knew that it occurred. It occurred as I came
17 back to Georgia Power Company, but the details and the
18 subject of it I was not familiar with, no, sir.

19 Q. Did anyone ever tell you, Mr. Dahlberg, that Mr.
20 Hobby contended that Mr. Pat McDonald gave false or
21 inaccurate testimony in the Fuchko and Yunker proceeding?

22 A. No, sir.

23 Q. Was Mr. Hobby's involvement in the Fuchko and
24 Yunker proceeding discussed in any of the management council
25 meetings?

1 A. No, I didn't know he was involved.

2 Q. Did you discuss that with Mr. Evans, Mr. Boren or
3 Mr. Williams?

4 A. No, sir.

5 Q. To your knowledge, Mr. Dahlberg, was that
6 contention of Mr. Hobby's a factor in any way in the decision
7 to eliminate the position of general manager/nuclear
8 operations contract administration?

9 A. No, sir.

10 Q. Mr. Dahlberg, did Mr. Pat McDonald or Mr. Joe
11 Farley ever state to you that they wanted Mr. Hobby
12 terminated?

13 A. No, sir.

14 Q. Did they ever tell you that they wished to see Mr.
15 Hobby leave the employment of Georgia Power Company?

16 A. No, sir.

17 Q. Were you ever advised that Mr. Hobby or Mr. Head,
18 George Head, felt that the nuclear operations contract
19 administration group was not getting sufficient cooperation
20 from SONOPCO?

21 A. No. The only thing I was aware of is that there
22 wasn't much information to be worked on, and I think that's
23 one of the things that led to the elimination of the job,
24 there just wasn't a function there. That's the only thing I
25 recall.

1 administration. In your mind that contract between Georgia
2 Power and SONOPCO was going to come right around the corner;
3 right?

4 A. I don't know whether months is right around the
5 corner, but I did anticipate that SONOPCO would be formed in
6 a matter of months, yes.

7 Q. All right. So you set up the nuclear operations
8 contract administration group to do all the functions that
9 -- budgeting, oversight, interface and a host of other things
10 -- right? -- and the reason you did that was so nuclear
11 operations contract administration could start functioning
12 immediately because a contract was imminent; right?

13 A. That's part of the reason. The other reason was
14 the SONOPCO organization was new. I don't think any of us
15 knew exactly how it would operate and exactly what would be
16 required.

17 I anticipated that, yes, it would be formed; yes, I
18 anticipated there would be a contract and there would be
19 something to administer; yes, I anticipated that we would
20 need somebody to be involved in gathering information about
21 the performance of the units, about the budget, about safety
22 factors.

23 As it turned out, one, there is no contract;
24 secondly, those things that I thought would be required in
25 terms of monitoring performance, we're monitoring

1 performance, but I get that information directly from the
2 SONOPCO organization, just like I get information directly
3 from the fossil information group, I get information directly
4 from our marketing group, and there was no need for a
5 separate organization to do basically the same thing.

6 You mentioned budgeting. SONOPCO does the budget,
7 they review it directly with me. There's not a function in
8 the middle.

9 Q. And SONOPCO was new, and nuclear operations
10 contract administration was new.

11 A. Yes.

12 Q. Almost simultaneously new; right?

13 A. Of course.

14 Q. Okay. And so now you're setting up nuclear
15 operations contract administration, and you don't want to
16 duplicate efforts; right?

17 A. Correct.

18 Q. And so you wanted to set up nuclear operations
19 contract administration to do certain things; right?

20 A. Yeah, I've just described that.

21 A. All right. But it ends up now that SONOPCO is
22 doing those things, and not nuclear operations contract
23 administration group; isn't that correct?

24 A. That's absolutely correct.

25 Q. All right. So you set up nuclear operations

1 contract to do certain things, at the same time you set up
2 the SONOPCO project, but somehow along the way your whole
3 concept of why you created SONOPCO has fallen apart, and
4 you've got all those functions, and you started to stick them
5 in the SONOPCO organization; right?

6 A. No, you made a -- one thing you said was wrong.
7 You said my expectations for SONOPCO fell apart, and that was
8 not correct.

9 Q. Your contract.

10 A. Those things that I thought the contract group
11 would do did not materialize because I got the information
12 from another source, there was no contract to administer.
13 There really wasn't a function to perform.

14 Q. But when you set up nuclear operations you thought
15 there was going to be this contract, so it only made local
16 sense to allow nuclear operations to start doing those
17 functions -- right? -- you have a new SONOPCO project forming
18 with a whole headache and a host of problems associated with
19 moving offices, with hiring staff, with ten thousand new
20 things to do with every new major corporation creation, and
21 you had nuclear operations contract administration group
22 already established, there are offices at Georgia Power
23 Company, the space was there, you could relieve this whole
24 burden off of SONOPCO's back by allowing Marvin Hobby's
25 nuclear operations contract administration group just to pick

1 responsibilities he may have had with respect to performance
2 indicators?

3 A. I did not, and to my knowledge Mr. McDonald did
4 not.

5 Q. You mentioned that you came back to the company I
6 think the late part of '88.

7 After returning to the company, did you develop an
8 opinion about the necessity for the nuclear operations
9 contract administration?

10 A. Yes, I did.

11 Q. And what was your opinion?

12 A. I believed that we should have multiple points of
13 interface with the new company, that as an example I was
14 responsible among other things for interfacing with the
15 Public Service Commission.

16 I felt like that the accounting organization at
17 Georgia Power that presented testimony, presented information
18 to the Public Service Commission should have direct access to
19 people at SONOPCO, and all across the board.

20 I felt like we did not need a high level position
21 to interface with SONOPCO, that we should interface with them
22 in many ways similar that we do with the service company
23 where we have many people dealing and more liens of
24 communication.

25 Q. And did you discuss your opinions on that subject

1 with Mr. Fred Williams?

2 A. I did later in the year. Due to a retirement of an
3 executive I knew that there would be reorganization and Mr.
4 Williams would begin reporting to me at the end of the year,
5 and there would be changes taking place, so that in late 1989
6 after the rate case, probably in the late October-November
7 time frame, we began having discussions as to how we should
8 organize and proceed.

9 Q. And as of January 1, 1990 Mr. Williams would start
10 reporting to you?

11 A. That is correct.

12 Q. Okay. So that's the reason you were having these
13 discussions in late 1989 about the contract administration
14 group?

15 A. Yes.

16 Q. What was Mr. Williams' recommendation regarding the
17 contract administration group, and in particular Mr. Hobby's
18 position?

19 A. He concurred with my feeling that we did not need a
20 high level position, and that was a position that could be
21 eliminated.

22 Q. What were his reasons for making that
23 recommendation to you as you understood?

24 A. That in proceeding through the 1989 rate case it
25 was obvious that we were not getting information timely to

1 respond to the data requests, and that the position, it was
2 more of a bottleneck and did not allow for the type of
3 communications we needed, and that we could abolish the
4 position, and that other officers and other employees of
5 Georgia Power Company could perform those duties rather than
6 having them consolidated in a single position.

7 Q. Now, did you discuss Mr. Williams' recommendation
8 with Mr. Boren?

9 A. Yes, I did.

10 Q. Okay. And did Mr. Boren agree with the
11 recommendation of Mr. Williams?

12 A. He agreed with our recommendation, yes.

13 Q. Was Mr. Hobby's job performance a reason for
14 recommending the elimination of his position?

15 A. No, his performance was not the reason. It was the
16 fact we did not need the position.

17 Q. Let me get you to turn to Tab 3 in Exhibit R-18
18 which is an April 27, 1989 memo from Mr. Hobby to Mr.
19 Williams.

20 Have you ever seen or heard of that document
21 before?

22 A. I have in the course of this case. I had not seen
23 or heard of it prior to this case.

24 Q. Was this memo ever mentioned in any of your
25 conversations with Mr. Williams and Mr. Boren regarding the

1 MR. KOHN: That would definitely shorten things.

2 JUDGE WILLIAMS: All right. Let's do it, then.

3 MR. COLAPINTO: Do you have a copy with you?

4 MR. WITHROW: Yes, I do.

5 (Pause.)

6 MR. KOHN: Your Honor, we can read this into the
7 record after the witness.

8 MR. JOINER: The object of the stipulation, your
9 Honor, is to eliminate a need for all these questions.

10 MR. KOHN: I'm off that subject.

11 MR. WITHROW: We'll get it in later.

12 BY MR. KOHN:

13 Q. Now, what prompted you to begin looking into the
14 elimination of Mr. Hobby's job was the fact that Fred
15 Williams told you that Mr. Hobby was leaving the company, had
16 requested an early out package?

17 A. No, I had begun thinking about it prior to that.
18 Mr. Williams did make me aware that Mr. Hobby had approached
19 him late in the year and that in fact Mr. Hobby had raised
20 that issue. I didn't recall any of the details.

21 The first conversation I had with Mr. Williams on
22 the topic was at that point in time. I had thought about the
23 subject prior to that in looking over positions to streamline
24 the senior management of the company, looking at positions
25 that could be eliminated.

1 Q. But isn't it true that it was your understanding
2 that Mr. Hobby had contacted Mr. Williams about an early out
3 package and that's what initiated the conversations between
4 you and Mr. Williams to restructure the nuclear operations
5 contract administration?

6 A. That was discussed in one of our conversations. I
7 don't recall if it was the first conversation or not, but
8 that was discussed in one of the conversations.

9 Q. Could you just read into the record from Line 11 to
10 Line 23 on Page 84 of your deposition?

11 A. Line 11? Line 11 is an answer:

12 "November of '89 is when we mentioned that we would
13 begin restructuring to do some changes in the company, and
14 when we restructure how do we need to be organized. That was
15 the tone of the overall conversation."

16 Q. Thank you. Where did you stop reading?

17 A. (Indicates.)

18 Q. Continue to read all the way down to the end of the
19 page.

20 A. The question: "Okay. Was it at your request that
21 Mr. Williams was going to engage in a fact-finding mission to
22 determine whether the position was needed?"

23 Answer: "It was my understanding Mr. Hobby had
24 contacted Mr. Williams about an early out package, and that's
25 what initiated the conversation."

1 supervise Mr. Hobby or to work with him in his capacity as
2 general manager of that group?

3 A. Yes, sir. In the negotiations that were ongoing at
4 that time we were developing or toying with the concept in
5 negotiations of what we called a managing board agreement
6 concept, and we invited Mr. -- I invited Mr. Hobby to start
7 attending those negotiations with us in his new capacity as
8 manager of this nuclear operations contract administration
9 group since he would be directly involved if we were
10 successful in getting the contract negotiated and a
11 corporation set up.

12 Q. And did you have continuing contact with Mr. Hobby
13 throughout 1989?

14 A. Yes, sir. As the negotiations continued, even when
15 the negotiations somewhat halted because of other reasons
16 than SONOPCO, I continued meeting with Mr. Hobby because Mr.
17 Hobby saw, and I was given the responsibility of negotiating
18 those contracts, and he was directly involved in what I was
19 doing, so we had continual contact throughout 1989.

20 Q. Did there come a point in time when it was decided
21 that Mr. Hobby would begin reporting directly to you?

22 A. Yes, it did.

23 Q. Okay. And when was that, and tell the judge if you
24 would, please, why that decision was made.

25 A. On January 1, 1990 was the official transfer of Mr.

1 Hobby's reporting to me.

2 Prior to that time we had been -- in fact, I had
3 been as part of my negotiations reviewing the need for not
4 just Mr. Hobby's job, but the total organization and how it
5 would be fitted in with the new relationship that we were
6 negotiating, and I had conversations with Mr. Baker before
7 his retirement about the need for the organization and my
8 thoughts on it as I was doing that review, and then on into
9 the late fall when I reported to Mr. Evans then, and I also
10 gave him my impressions and my thoughts on whether the
11 organization was needed and what structure it should take.

12 We did not have a contract, and we had been going
13 on for some period of time, it did not appear we were going
14 to get a contract any time soon even though we were
15 negotiating again, but my decisions were being made on what I
16 saw, whether or not we had an incorporated entity or not,
17 what would be the role of that area.

18 Q. Okay. You mentioned that you were going through
19 this ongoing process of review. Did you ever talk to Mr.
20 Hobby about the necessity for the contract administration
21 group?

22 A. Yes, sir, I did.

23 Q. Tell the court if you would about those
24 discussions.

25 A. Those discussions, some of them I guess the first

1 impression I had was probably in the spring. By then I was
2 still very open-minded because we were still in the very
3 early stages of negotiations at that point as to what we
4 would need, and we were also starting to run into problems
5 with negotiations with Oglethorpe, but later in the year when
6 we started negotiations up in earnest again I gave it more of
7 a review, and I was -- you know, we had a Southern Services
8 setup, we didn't have that role there -- I was already
9 responsible, I being bulk power markets, responsible for the
10 interface with the co-owners, to how it was going to fit in,
11 this whole organization, with this relationship which we were
12 already responsible for.

13 We were already administering as I said some thirty
14 or forty contracts with the co-owners and other entities, so
15 I had expressed all these to Mr. Hobby, and I was playing
16 somewhat a devil's advocate with him and his staff at times
17 as to "Explain to me, I want to hear you, I want to be
18 objective why you are needed? What is your function? What
19 should your function be?, but let's not duplicate things. Be
20 fair and come in objectively."

21 A. Did you think there was a need to have a separate
22 interface between Georgia Power and the co-owners in addition
23 to the interface that your group already had at that time?

24 A. Not a separate total interface as that's the only
25 interface they should have. The way we functioned in my role

1 as administrator of these contracts and as the joint
2 committee member, and we had Mike Harrell who was also in the
3 accounting officer, the chief accounting officer, was another
4 rep.

5 We needed those contacts to occur where the work
6 was being done for informational purposes and communication,
7 but the official path had to be through the joint committee
8 member, which was myself. That needed to be the path.

9 If we had set up another one now, we were
10 separating that outside, and that was going to give multiple
11 paths and some confusion I think that would come down the
12 road.

13 Q. You mentioned that you had several contracts that
14 your organization was responsible for administering. Did you
15 have within bulk power or -- I'm sorry, was there in the
16 company a separate group to administer contracts that you
17 were responsible for under bulk power?

18 A. No, sir. We had the administration. Accounting
19 had a fixed joint asset accounting where they did the
20 accounting function there for the joint-owed units, but there
21 was no separate entity set up anywhere that had the overall
22 responsibility other than the responsibility given us to make
23 sure things happened that were supposed to happen in the
24 contract time-wise and that type thing.

25 Q. In your opinion in 1989 as you developed your

1 thinking did you see a need for there to be separate group in
2 the company to administer a contract between Georgia Power
3 and SONOPCO if that contract ever came into existence?

4 A. No, sir, I didn't. My determination after hours of
5 talking with Mr. Hobby and his people, and accounting staffs
6 and in fact SONOPCO people, I did not see a need for a
7 separate organization.

8 I did possibly see a need for some of the staff,
9 not all the staff he was talking about, to be included as
10 part of the bulk power market services area which already
11 existed for administration of the contracts, and this could
12 be easily picked up by them, which was really understaffed
13 already, and we could take on this additional responsibility
14 in that area and use some of the staff there.

15 Q. You said that you received some input from people
16 in Mr. Hobby's organization. Let me get you to turn to Tab 7
17 of Respondent's Exhibit 18 and ask you to identify that
18 document for the record, please.

19 A. Yes. This was provided to me by Mr. Hobby and his
20 staff in either late November or early December in response
21 to my request again that I wanted to make sure I understood
22 where all of the possible interfaces were that existed, who
23 needed to be interfacing between SONOPCO and Georgia Power
24 Company.

25 Q. And did you have a meeting with Mr. Hobby and his

1 staff to consider the information that was placed in this
2 memo?

3 A. Yes, sir, they came to my office and we discussed
4 it.

5 Q. And can you tell the court generally what was
6 discussed in that meeting?

7 A. In that meeting the staff -- and Mr. Hobby was late
8 as he said coming to the meeting -- defended essentially, I
9 really pressed them on "Why are you needed? If we've got
10 accountants already talking, and budget people already
11 talking to each other between here and SONOPCO, and SONOPCO
12 has staff to do this, tell me the real reason," and I really
13 pressed as I said playing the devil's advocate as to "Why are
14 you needed? I'm not here to eliminate you, I just need to
15 know, I need to get in my mind fixed why this function is
16 necessary and would be necessary with SONOPCO set up," and we
17 went through these various areas explaining why they thought
18 they were necessary.

19 Q. At what point did you make a formal recommendation
20 to your superiors about the elimination of Mr. Hobby's
21 position?

22 A. I would guess the formal recommendation, though I
23 had had discussions before and I had given my thoughts on the
24 idea, was probably -- well, they didn't report to me until
25 January 1st, and I gave my formal recommendation then,

1 actually went through with the process, but prior to that in
2 December and early November I was already informing Mr. Evans
3 that I did not see the need for a high level manager, or did
4 I see the need for a separate organization to exist to
5 administer a contract if we ever got a contract.

6 Q. Did Mr. Evans agree or disagree with your
7 conclusion?

8 A. He agreed with it.

9 Q. In making your decision about the elimination of
10 Mr. Hobby's position, did you ever discuss the need for the
11 contract administration group or Mr. Hobby's position with
12 Mr. McDonald?

13 A. No, sir.

14 Q. Did you ever discuss those issues with Mr. Farley?

15 A. No, sir.

16 Q. Did Mr. McDonald or Mr. Farley ever state to you
17 that they wanted to see Mr. Hobby's position eliminated?

18 A. No, sir.

19 Q. Did they ever tell you that they wanted to see Mr.
20 Hobby fired?

21 A. No, sir.

22 Q. Did they ever say that they wanted to see him leave
23 the company?

24 A. No, sir.

25 Q. Did they ever express any opinion to you on his

1 something secret or anything, I was aware of that.

2 He was concerned because his organization was not
3 involved in it, but there was not a SONOPCO. Pat McDonald
4 still was a Georgia Power employee, most everybody at SONOPCO
5 that worked on Georgia units was Georgia employees, so there
6 was not a specific relationship or reporting position to
7 bring this through Mr. Hobby and his group.

8 I was aware of it, though, as the joint committee member and
9 being the negotiator with the co-owners.

10 There were some other areas in here that I had told
11 him that was just incorrect, and Dan Smith had mentioned to
12 me. In fact we had written a memo back to Dan Smith I think
13 we talked about, or he mentioned or raised that they inquired
14 in the joint committee subcommittee meeting about the
15 reporting relationship. We had responded, but I had never
16 heard that from Mr. Kilgore who was Mr. Smith's superior at
17 Oglethorpe in our negotiations. He had never raised that
18 issue with me as to who Mr. McDonald reported to, so I had
19 seen a lot of things in the memo that I thought I addressed
20 at that time with him that were inaccuracies, besides the
21 memo not being responsive to what I needed to help formulate
22 in my mind what the relationship organizationally and
23 interface should be between Georgia Power and SONOPCO.

24 Q. Let's back up to that point just a second, the
25 reason for asking for the memo. Did you tell Mr. Hobby that

1 position resulted in his employment becoming an impacted
2 employee.

3 Mr. Hobby was quite familiar with that, as he had
4 eliminated several positions himself and part of
5 reorganization had gone through the same process where he had
6 found other employment for the people in those jobs or
7 offered outplacement packages.

8 Q. Did you ever tell Mr. Tom Kilgore at Oglethorpe
9 Power that you were going to eliminate Mr. Hobby's position
10 in advance of telling that to Mr. Hobby?

11 A. No, sir, I did not.

12 Q. Did Mr. Hobby ever confront you with the accusation
13 that he had learned indirectly through Mr. Kilgore or Mr. Dan
14 Smith that he was going to have his job removed or
15 eliminated?

16 A. Yes, sir, he inquired from a conversation he had
17 with Dan Smith about something to that effect, and I don't
18 remember exactly how he phrase it, but what I explained to
19 Mr. Hobby in a meeting with Mr. Kilgore in our negotiating
20 sessions, SONOPCO was one of those issues that we were
21 discussing at the time, and I had told him that where I had
22 come down to as far as staffing at Georgia Power is I did not
23 believe we needed expertise in the nuclear operating area on
24 staff at Georgia Power Company, that was what we centralized
25 the function for at SONOPCO, and it would be redundant to

1 staff at Georgia Power and to set up this organization and
2 contract with an organization for the nuclear expertise.

3 The way I explained that to Mr. Hobby is I had just
4 gone through a reorganization of a system planning function
5 where we centralized the system planning function in
6 Birmingham, and if I had kept system planning expertise, one
7 or two on the staff and moved the rest of them to Birmingham
8 where the planners are going to plan, so you would have had
9 planners looking for something to do and they would have
10 created work, and then we would have had the same issue
11 again, a turf issue, and it just didn't make sense and it
12 didn't seem the most efficient way to do.

13 That was what discussion I had with Mr. Kilgore, he
14 was inquiring as to what we were thinking, and that was my
15 thoughts on the subject that I had shared with him, because
16 he was looking at his own staffing as to what he was going to
17 have at Oglethorpe.

18 Q. And when you made that comment to Mr. Kilgore about
19 not retaining in Atlanta expertise in the operation of
20 nuclear plants, were you referring to Mr. Hobby?

21 A. No, sir, I wasn't even thinking of Mr. Hobby at
22 that time.

23 In fact, I informed Mr. Hobby at that meeting that
24 I had no problem with his performance and what he was doing,
25 and at that point even though I was looking at the whole

1 organization and I had shared with him already the concern I
2 had with the high level job such as that in a separate
3 organization, he was aware of that already, that I had
4 already raised that issue with him.

5 Q. Let's talk for a minute about your discussion with
6 Mr. Hobby on his outplacement package.

7 Now, when generally speaking was the first time
8 that you began to have those discussions?

9 A. It was either late November or early December, in
10 that time frame. A lot of that discussion runs together
11 right there.

12 In talking, I think it might have been one of these
13 very meetings we were talking about that I was suggesting
14 maybe that we didn't need a high level position, and
15 questioned as I said whether we needed a separate
16 organization.

17 I asked Mr. Hobby would he be interested in
18 employment at SONOPCO, and the immediate reply was no, that
19 he wasn't interested.

20 I said "Would you be interested maybe in another
21 position within one or two levels somewhere else in the power
22 generation or another area of Georgia Power Company?" "No."

23 I said, "Mr. Hobby, you're limiting my options in
24 what I'm looking at in this," and I think I mentioned to him
25 "Would you be interested in some kind of outplacement

1 BY MR. KOHN:

2 Q. Mr. Williams, let's cover the April 1989 time frame
3 when Mr. Hobby and you were discussing his memo. Had you
4 begun the process of considering to eliminate Marvin Hobby's
5 job by that time?

6 Q. No, sir, I had not. What I had begun by that time
7 was to review the relationship that needed to exist, or
8 actually investigate the relationship that needed to be in
9 place between Georgia Power Company and SONOPCO.

10 The areas I wanted to look at was what should we --
11 should we just have one central contract that Mr. Hobby
12 understood should be their contact, or should we have
13 multiple contacts, should we continue the accounting
14 contacts, the budgeting contacts.

15 I wanted to look at that in more detail since I had
16 been assigned the responsibility to negotiate the
17 relationship between us and the co-owners, and the co-owners
18 were very interested in our relationship with SONOPCO since
19 they owned a large portion of the nuclear facilities, and so
20 wanted to comfort myself on what that relationship should be.

21 Q. And had you engaged in a fact-finding process so
22 you could make a recommendation as to what or how the nuclear
23 operations contract administration should be reorganized at
24 the time Mr. Hobby submitted his April 27th memo?

25 A. I didn't look at how that should be reorganized. I

1 was looking at what their organization and function -- in
2 fact, that was what I was asking from Mr. Hobby is "What do
3 you see is your function? Where are these interfaces? What
4 should they be? Give me information there, what problems you
5 saw, whether there was dual setups, or you were not involved
6 in the loop, why were you not involved?"

7 I was asking SONOPCO and a lot of people there the
8 same questions. I was asking the accounting organization the
9 same type things as to what they were doing.

10 I was trying to get a feel myself of what was going
11 on, what should be going on there. As a negotiator I needed
12 to understand what the relationship was going to be.

13 Q. So you were not -- you were trying to figure out
14 how to resolve the interface problem, or were you trying to
15 figure out how to reorganize that area?

16 A. Trying to figure out what the interface should be
17 in my own mind.

18 Q. And you were engaging in a fact-finding mission;
19 correct?

20 A. That's correct.

21 Q. And you were not considering what the problems, the
22 breakdown in communications problems were; is that correct?

23 A. The breakdown in communications problem? What
24 breakdown in communications problem?

25 Q. Between SONOPCO and the nuclear operations contract

1 administration group.

2 A. I didn't know there was a breakdown in
3 communications because there -- how could there be a
4 breakdown when I'm not sure what their function was at that
5 point as far as I was concerned, because we did not have a
6 nuclear contract to administer.

7 What we were administering was a project which most
8 of the employees in that, or all the employees in that
9 project were still Georgia Power employees with the exception
10 of Services, Southern Services' employees, and if we were
11 going to go forward and have a nuclear operating contract
12 administration group at Georgia Power Company I wanted to
13 make that I understood how it would function and what its
14 responsibilities should be in context with what SONOPCO's
15 organization was going to be, and how that all fit together
16 with what we were negotiating with the co-owners.

17 Q. And Mr. Hobby then presented you with a memo --
18 Can you tell me what your conversation was to Mr. Hobby that
19 led him to give you this April 27th memo?

20 A. Yes, sir. I asked him to tell me where you saw
21 what interfaces there should be between SONOPCO and Georgia
22 Power Company, who should be talking to who, what channels of
23 communication should there be there, whose responsibility was
24 it to initiate things, give me some kind of flow background.

25 He was reluctant to ever giving that to me. In

1 fact, I had to pull it out of him in November, and I still
2 didn't get everything I wanted done, and for some reason they
3 didn't want to give me that.

4 I finally got it in November, or at least got some
5 part of it, so I was actually having to do a lot of this
6 investigation myself talking to the accounting area and all.

7 As I said, this memo didn't give me who in
8 accounting reports to who or talks to who at SONOPCO. I know
9 I've got an accounting group over at SONOPCO, and I've got
10 one here. Who's supposed to be doing what? Who's talking to
11 who there? What should that be?

12 All I got out of Mr. Hobby was that "Everything
13 ought to come through me", and I don't think that's right. I
14 don't think we can function that way, there's no way we can
15 function that way.

16 So I was doing the -- it was more of an
17 investigation on my own part as to what it should be set up,
18 and I'm not saying he was the only culprit. You've got a new
19 organization in Birmingham that thought they should have a
20 lot of things.

21 I was looking at the whole organization in the
22 hopes that when we get a contract, at the time we got a
23 contract it was ready to go and SONOPCO was incorporated we
24 would be ready to go too.

25 Q. So you were engaging in a fact-finding mission to

1 this testimony we've had today.

2 My effort was to resolve a lot of those areas by
3 looking at the organization, the interfaces, what they should
4 be, and let's make a decision on what should be there.

5 Q. Well, why were you doing that, and not George Head?

6 A. I was doing that because I was responsible for the
7 interface with the co-owners which had intervened into the
8 SONOPCO proceeding.

9 I was responsible for administering as I said some
10 forty contracts already in my area. I took it on myself as a
11 negotiator to look at and see if I could assist in that area.

12 I had talked with Mr. Head. In fact, Mr. Hobby and
13 I sat down with Mr. Head and he agreed that since I was
14 responsible for the negotiations of this and that Mr. Hobby
15 was serving on my negotiating team and the managing board
16 group and all that I could pursue of this.

17 Q. Well, you had responsibility -- there were two
18 contracts that the contract administration group was
19 administering or would be administering. One was between
20 SCNOPCO and Georgia Power Company, and the other one was
21 between the joint owners and Georgia Power Company; is that
22 right?

23 A. No, sir, that's wrong. The contract administration
24 group would not be administering the managing board
25 agreement. That would be administered with my department.

1 there would be no accounting of the budget, or all the
2 accounting would just happen at SONOPCO?

3 A. I believe that's a different question than what you
4 were asking me. That would be maybe looking at a review of
5 the budget and helping present the budget to management
6 council. That's not approving the budget.

7 Q. Well, wasn't that the role of nuclear operations
8 contract administration to review the budget and then tell
9 management council to give to management council knowledge
10 and guidance as to whether the SONOPCO budget was prudent?

11 A. I think we can go back to your words because you
12 told me in the statement we go back and look at the
13 announcement that came out and it said approve the budget,
14 and we already have a difference of opinion what we think
15 that meant.

16 I think that's what I was trying to determine just
17 what was going to be NOCA as you refer to its
18 responsibilities.

19 Q. Well, then --

20 A. There was some already -- we had set up this
21 central organization with this expertise there which had a
22 budgeting function with it. Now, if you go set the same
23 thing back up at Georgia Power Company you start scratching
24 your head again what have you done, who's in charge, who's
25 doing what?

1 I think we had to work that out. That's what I was
2 attempting to do on my fact-finding as you referred to it.

3 Q. And did you fact-finding -- then you determined
4 that the problem was a conflict between Mr. Hobby and Mr.
5 McDonald?

6 A. No, sir, I never said that.

7 Q. Well, I sort of inferred it from your statement
8 that Mr. Hobby wanted to run SONOPCO that I guess Mr.
9 McDonald would take exception to that.

10 A. No. I think what we were talking about is that he
11 kept raising the concern of whether Mr. Dahlberg was in
12 charge or Mr. McDonald was in charge, and Mr. Hobby seems to
13 be the only one that keeps raising that issue about Mr.
14 McDonald.

15 Q. Okay. But after Mr. Hobby raised that issue with
16 you, you went to President Dahlberg and discussed Marvin
17 Hobby's regulatory concern; isn't that correct?

18 A. No, sir. What I discussed with Mr. Dahlberg was
19 what I was seeing as far as our relationship with SONOPCO
20 that I was looking into, what was going on in our
21 negotiations with the co-owners. That's what I discussed
22 with Mr. Dahlberg.

23 Now, as far as the memo went, I didn't go through
24 the memo in detail with Mr. Dahlberg. In fact, I'm not sure
25 whether I showed him the memo.

1 yes.

2 Q. And they were reporting to Mr. Adams until the
3 management council reorganized and instructed you on the
4 first of 1990, the beginning of 1990 that Mr. Hobby would
5 start reporting to you at that point?

6 A. I don't know the management council. Mr. Evans
7 called and said that he and Mr. Adams had met and talked to
8 Mr. Dahlberg and that beginning January 1st that the nuclear
9 operating contract administration group would report directly
10 to me.

11 Q. And at the time you got that information, you had
12 already determined that you were going to eliminate Marvin
13 Hobby's job the day he started to report to you?

14 A. I think I had already told him that that was my
15 leaning, yes, and going to be my recommendation. He was
16 aware of that.

17 Q. Okay. So it was just a matter of needing to
18 formally transfer Mr. Hobby to you so you personally could
19 eliminate the job? Why didn't Mr. Adams just eliminate it?

20 A. I was not a party to that decision. I had already
21 been making my recommendations as to what I thought was
22 needed.

23 I think Mr. Baker before his retirement and Mr.
24 Adams now in a discussion had all been saying at some point
25 down the road that this function, the more information that

1 we were finding in these fact-finding missions and what was
2 going on in the negotiations more properly belonged in the
3 bulk power markets organization and not where it was over in
4 the power generation area, so I think we had all been
5 anticipating this, and Mr. Hobby knew that I thought at some
6 point, and I told him that, and he believed that too, that he
7 would be reporting to me, or the nuclear operating contract
8 administration section would, yes.

9 Q. And you were playing an informal role about what
10 you were going to do with nuclear operations contract
11 administration group, and you were not advising Mr. Hobby of
12 what you were going to do during --

13 A. I was being very candid with Mr. Hobby. I wasn't
14 pulling any punches, I was telling him what I believed, and I
15 think that was the only fair thing to do, that I wasn't going
16 to have this, this is what I believed, and I was going to let
17 him know about it.

18 That's how I asked him about "Would you be
19 interested in a SONOPCO job or some other job?"

20 I might point out that when it moved over, it's a
21 20 Level job now, but when it moved over it was no longer.
22 I think probably the 20 came because as you mentioned
23 yesterday in your own direct testimony that part of that was
24 the fact that it was an assistant to a senior VP.

25 I am not a senior VP, so when it moved over there

1 referring to, your Honor.

2 THE WITNESS: I can still tell you from memory.

3 JUDGE WILLIAMS: A witness is entitled to testify
4 based on his own personal memorandums or notes. I mean
5 you're entitled to look at it if you want to look at it.

6 If he's using something to help him recall, that's
7 permissible except that you do have the right to look at what
8 he's using to help him recall.

9 MR. KOHN: All right, sir.

10 JUDGE WILLIAMS: Continue.

11 BY MR. JOINER:

12 Q. I believe, Mr. Boren, my pending question was
13 whether you had an occasion to discuss the decision to
14 eliminate the position of general manager of nuclear
15 operations contract administration with Fred Williams and
16 Dwight Evans in the fall of 1989.

17 A. Yes, sir.

18 Q. Who was responsible for making that decision, Mr.
19 Boren?

20 A. Mr. Williams was.

21 Q. And what were the reasons as you understood them
22 for the decision to eliminate the position?

23 A. When we established the position back at the end of
24 1988 -- I believe it was the end of '88, it may have been the
25 beginning -- we did that on the assumption that we would have

1 a contract for this manager to administer.

2 Here we are almost 1990, the contract has not come
3 about, and we've realized that the reason we established the
4 job just wasn't there, and that's the primary reason that we
5 were looking at eliminating the job, and the other
6 miscellaneous requirements for the job were kind of being
7 handled through the other normal functions of the company.

8 Q. Mr. Boren, why was it that you were being involved
9 in those discussions and in the consideration of whether hits
10 position should be eliminated?

11 A. We had kind of a standard policy that when we get
12 down to those types of jobs, the major areas or whatever,
13 that I would work with whoever the vice president and the
14 management council member is making sure we all understood
15 the guidelines we used to address eliminating jobs, making
16 sure that Fred knew what type of alternatives he had
17 available and so forth.

18 Q. You mentioned the type of alternatives that would
19 be available. What were the alternatives as you understand
20 them that were presented to Mr. Hobby?

21 A. Mr. Williams as I understood it presented three
22 different alternatives to Mr. Hobby.

23 The first alternative was to help him locate a
24 comparable level job at SONOPCO, which he rejected.

25 The second alternative was to help him find another

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME III</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Thursday, October 25, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

1 progressing with regard to the co-owners of Plants Hatch and
2 Vogtle, and one of those co-owners' objection at the SEC is
3 why we have not yet gotten approval for the formation of the
4 subsidiary, and that ongoing negotiation and what to do about
5 that was a major part of it, and it was my understanding that
6 and just a general "How is it going?" were the purposes of
7 the get-together.

8 Q. At that May 5 meeting, Mr. Farley, was there any
9 discussion of the nuclear operations contract administration
10 group or of the need for having such a group?

11 A. There was some discussion. It was not a major part
12 of the dialogue, but there was some discussion of it.

13 Q. And if you will, Mr. Farley, tell the court what
14 that discussion was.

15 A. The major aspect of it had to do with the proposal
16 for adding -- and I've forgotten whether one, two, three --
17 but adding some job authorizations for that group who would
18 be nuclear engineers or people of that level, and I was asked
19 what I thought about that, and I expressed my opinion of what
20 I thought about the desirability or the lack of desirability
21 of doing that.

22 Q. What was your opinion, Mr. Farley?

23 A. It was my opinion then, and still is that if the
24 Southern system is to achieve the economies and the
25 management approach that was desired in the formation of a

1 Southern Nuclear Operating Company group that it would be an
2 unnecessary expense and a duplication to set up a group that
3 would oversee and overview the decisions that were being made
4 by the nuclear operating group.

5 This is a problem that The Southern Company, and I
6 presume other organizations tend to have in that if you
7 assign responsibility to a group, and then you set up another
8 group to oversee whether that group is doing it properly,
9 then you wind up with duplication, you wind up with an
10 adversarial relationship, and if you don't like the way that
11 the group is doing its work you ought to get another group,
12 but don't set up competing groups.

13 We have had experience with this within the
14 Southern system on other areas, and I expressed the view that
15 we would simply be adding people in a duplicative role, and
16 that if Georgia Power or Alabama Power for that matter were
17 not satisfied with the staffing, then we ought to change the
18 staffing, but let's not duplicate it.

19 That was in general the opinion that I expressed.

20 Q. Mr. Farley, was there any discussion in that
21 meeting of any complaint or concern of Mr. Marvin Hobby to
22 the effect that his group was not getting sufficient
23 cooperation from the SONOPCO project?

24 A. No, sir, I recall no such discussion.

25 Q. Mr. Farley, let me show you a group of documents

1 nuclear organization.

2 Q. And that's because Mr. Dahlberg was just about to
3 increase Mr. Hobby's staff I think you testified by three
4 individuals or something, and you had learned about this?

5 A. It was not my understanding that Mr. Dahlberg was
6 about to increase the staff. It was my understanding that
7 that was under consideration.

8 I didn't know what Mr. Dahlberg was going to do or
9 not do, and he didn't indicate to me what he would do or not
10 do.

11 Q. Okay. So basically the sum and substance of the
12 discussion was Bill Dahlberg saying to you, Mr. Farley, "Hey,
13 I'm about to consider expending a lot of resources to get
14 this contract administration group up and operating," and you
15 respond saying "Hey, wait, we could do that just as well over
16 at our side, so why don't we just transfer the function over
17 to SONOPCO?"

18 A. No, sir, that was not the way the conversation went
19 at all.

20 Mr. Dahlberg had before him as I understood it a
21 request from Mr. Hobby for some additional personnel, and Mr.
22 Dahlberg just asked me what did I think about increasing some
23 personnel for a group that would interface with Southern
24 Nuclear, and sort of translate what Southern Nuclear would be
25 doing to other parts of Georgia Power Company, and my

1 response was that I thought that would lead to -- either be
2 or would lead to duplication, and if there was a problem we
3 ought to address the problem rather than just adding more
4 personnel.

5 Q. And what was the problem?

6 A. I was not aware that there was a problem, and to my
7 knowledge there wasn't a problem, except I thought there
8 would be a problem if we set up a duplicating staff to
9 oversee what another group was doing.

10 Q. So it was basically a duplication of efforts, and
11 the meeting was to decide either whether SONOPCO was going to
12 do that or Georgia Power Company, being they were duplicating
13 each other?

14 A. That was not what the meeting was about. This
15 subject came up during the course of the discussion, but as I
16 said earlier I don't think that was the reason for the
17 meeting.

18 I can't tell you why Mr. Dahlberg asked me to come
19 by his office for a sandwich. That's some thing he'd have to
20 tell you, but that was not my understanding of the purpose of
21 the meeting.

22 Q. Now, you're involved with negotiating contracts on
23 behalf of SONOPCO; is that correct?

24 A. I am involved among others with some contract
25 negotiations, including the undertaking to try to work out an

1 dealing with Alabama or Georgia in terms of his role as
2 an officer of those companies, which I'm not an officer of.

3 Q. And the nuclear operations contract administration
4 group, or a similar group that would be in SONOPCO would be
5 in the administrative area?

6 A. We don't have a similar group to what I understood
7 the contract administration group was to be.

8 We don't have quite that kind of group, because I
9 understand they were to be almost a general group to oversee
10 what it was we were doing in most every function.

11 Q. And the group that's at SONOPCO which currently
12 oversees what you're doing, preparing budgets and monitoring
13 performance, that's all the administrative group; correct?

14 A. Well, no, sir. I don't want to leave it that we
15 have what I understood Mr. Kobby was proposing. That's not a
16 contract administration group.

17 There is no contract to administer in that regard
18 because we are not yet a corporation, we don't have a
19 contract, so in the sense of monitoring everything that the
20 Southern Nuclear group does as a group with Hatch and Vogtle
21 we don't have that.

22 We are a line management organization at those
23 plants with support from technical and administrative sides,
24 and there isn't a contract administration group like that,
25 there just isn't.

1 expect that SONOPCO would be incorporated?

2 A. We expected it was going to be incorporated
3 momentarily, some time in January.

4 Q. Okay. And, Mr. Head, if SONOPCO couldn't be
5 incorporated and if there was no operating contract between
6 Georgia Power and the SONOPCO corporation, would there have
7 been anything for the nuclear operations contract
8 administration group to do?

9 A. This was never really discussed, but I would see no
10 reason there would be anything because we had no contract to
11 administer, so we didn't have anything to operate.

12 Q. Okay. Mr. Head, I want to direct your attention to
13 a document which is Tab 3 of Exhibit R-18, a memorandum dated
14 April 27th from Mr. Hobby to Mr. Williams, then I want to ask
15 you some questions about the memorandum.

16 First let me ask you, Mr. Head, when was the first
17 time you saw this memorandum?

18 A. I saw this memorandum on April the 27th.

19 Q. All right, sir. And when was your last day in the
20 office at Georgia Power Company?

21 A. April 28th.

22 Q. Approximately what time of day, if you remember, on
23 the 27th of April did Mr. Hobby show you the memorandum?

24 A. As I recall, it was early in the morning, somewhere
25 around 7:30 I would think.

1 doing for us directly.

2 Q. Okay.

3 A. And of course his opinion was that we didn't need
4 that function.

5 Q. Was there any proposal or suggestion made at that
6 meeting to the effect that Mr. Hobby and his group should be
7 incorporated into the SONOPCO project?

8 A. Yeah, Mr. Dahlberg's response to Mr. Farley was
9 that, you know, that "We really don't need that, and why
10 don't you take these people in SONOPCO."

11 Q. Okay. Was there any decision on that subject?

12 A. No, there was no decision. It was a matter that
13 was put on the table for future discussion.

14 Q. Okay. Now, in that May 5th meeting, or whenever
15 the meeting occurred, but the meeting with Mr. Dahlberg and
16 Mr. Farley at which you discussed these matters, was there
17 any discussion there about the April 27th memorandum from Mr.
18 Hobby to Mr. Williams?

19 A. No. I never -- I was not aware of the April 27th
20 memorandum at the time of that meeting, and in fact --

21 Q. When did you become aware of it?

22 A. Fred Williams some times later mentioned the
23 memorandum to me, but he was unable to show me a copy of it
24 because he didn't have a copy, and the only time that I ever
25 saw the memorandum was in your office when you showed me a

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME IV</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Friday, October 26, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHEROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

1 versus the SONOPCO project.

2 Q. All right. Now, you gave Mr. Williams this memo
3 expressing all the problems that you had. Did Mr. Williams
4 go over those problems with you in that memo?

5 A. We went down the list of items, but again the
6 discussion was mainly on the interface issue, not so much the
7 individual items.

8 Q. Was the discussion centered around the reason why
9 Mr. Williams couldn't perform the nuclear operations contract
10 administration function at SONOPCO?

11 A. I really don't understand the question.

12 Q. Was the focus of Mr. Williams' statements in the
13 beginning of the meeting why is it that nuclear operations
14 contract administration function couldn't be performed in
15 Birmingham?

16 A. It was not whether why it could be performed there
17 or at Georgia Power, it was he was more or less asking us to
18 justify why it should be performed at Georgia Power versus in
19 Birmingham at the SONOPCO project.

20 Q. And that was not the understanding of why you
21 entered that meeting?

22 A. No, it was not.

23 Q. And Mr. Williams' statement to you to justify the
24 existence of your organization took you off guard?

25 A. Initially, yes, but it was a good point he made

Position Questionnaire

POSITION TITLE General Manager Nuclear Operations Contract Administration		
EMPLOYEE M. E. Hobby	REPORTS TO (POSITION TITLE) Senior Vice President Fossil & Hydro	
DEPARTMENT Nuclear Operations	PERSON'S NAME COMPLETING PQ	
DEPARTMENT NO.	REVIEWED BY (EMPLOYEE) <i>M. E. Hobby</i>	DATE 1/16/89
ORGANIZATIONAL UNIT (V.P.'S DEPARTMENT TITLE) Fossil & Hydro	APPROVED BY (IMMEDIATE SUPERVISOR)	DATE
WORK LOCATION 14/333	APPROVED BY	DATE

I. POSITION SUMMARY

Describe the primary reason this position exists in the company.

To manage the contract for the operation of the Company's nuclear power plants including establishing performance goals, accountabilities, long range nuclear planning, and budgets; to be responsible to the Joint Owners for the operation of the Company's nuclear power plants.

II. POSITION REQUIREMENTS

KNOWLEDGE: List the areas of special knowledge; (e.g., engineering, accounting, general business theories/practices, procedures). Indicate how they are used in this position.

Contractual obligations - understanding of contract law and the obligations of the contracting firm to Georgia Power Company and GPC's obligations to the Joint Owners, comprehensive knowledge of nuclear plant operations in regard to engineering principles, accounting, budgeting, etc. A detailed knowledge of joint agreement between the Joint Owners (OPC, MEAG, and the City of Dalton) and GPC regarding the operation of the nuclear plants. A detailed knowledge of the nuclear utility industry and of the operations of INPO and the NRC.

SKILLS: List the various skills needed in the position. Include technical, administrative and clerical skills, analytical/thinking skills, written and oral communication skills, managerial and interpersonal skills. Also, indicate how these skills are used in the position.

Technical and analytical skills to determine performance trends of the Company and industry; significant managerial and interpersonal skills to maintain positive interaction with contractor (SONOPCO), other Southern Company subsidiaries and the Joint Owners of the nuclear facilities, (OPC, MEAG, and the City of Dalton).

POSITION TITLE	EMPLOYEE
General Manager N.O. Contract Admin.	M. B. Hobby

III. POSITION RESPONSIBILITIES

List this position's Major Responsibilities in their order of importance (1,2,3, etc.) Indicate the approximate percentage of the total work time spent annually on each responsibility.

<u>MAJOR RESPONSIBILITIES</u>	<u>% OF TIME</u>
1. To manage all aspects of the contract with SONOPCO to achieve the safe, dependable, and cost effective operation of our nuclear power plants.	70%
2. To establish reasonable goals, accountabilities, and budgets for nuclear operations that support Georgia Power Company's Business Management Plan.	30%
3. To monitor nuclear operations to ensure performance is supportive of GPC's Business Management Plan.	15%
4. To serve as the primary interface between Georgia Power Company and SONOPCO and between Georgia Power and Joint Owners in nuclear operation matters.	15%
5. To be the primary interface with other Company functions including top management and with the Public Service Commission on matters related to nuclear operations including budget, financial planning, prudence and performance.	10%

POSITION TITLE

General Manager N.O. Contract Admin.

EMPLOYEE

M. B. Hobby

IV. POSITION ACTIVITIES

COMPLEXITY/DIVERSITY: List the most difficult or challenging aspects of this position. Also, if this position is responsible for coordinating/managing a variety of activities or functions, please list these management tasks.

The most challenging aspect of the job involves the relationship between GPC and SONOPCO. It will be most important for this position to ensure that SONOPCO management understands and incorporates the goals and the accountabilities that GPC develops for them and that SONOPCO operates in a manner that supports the accomplishment of GPC's corporate objectives and Business Plan.

JUDGEMENT/DECISION-MAKING: List examples of the types of judgements this position requires and the frequency (daily, weekly, monthly, etc.)

- Budgeting Process * Approve the Nuclear Operations annual budget - annually
- * Monitor budget - daily
- Plant Monitoring * Approve annual goals - annually
- * Monitor goals' achievement - daily
- Information Resource * PSC hearings on prudence - monthly
- * Top management requests - daily
- * Board of Directors - monthly

RISK: List examples of risk taking that may be required of this position, (i.e., taking action where the eventual outcome is not clearly known.)

The primary risks are to ensure GPC's interests are protected while maintaining a professional and cooperative relationship with SONOPCO.

CREATIVITY/INNOVATION: List examples of new methods, procedures or concepts the position may develop.

Since this agreement is rather different, there will be opportunities available to develop alternative budgeting methods. The uniqueness of the agreement also offers the chance to develop more meaningful performance indicators. New communicative methods could be developed to disseminate information on SONOPCO to interested parties.

V. RESULTS OF ACTION

CONTRIBUTION: List the direct and/or shared responsibilities of this position that contribute to the success of the company and/or organization.

The ability of this position to influence the management of SONOPCO to operate in a manner that best meets the interest of GPC would be significant. Also, this position has the responsibility for coordinating all the administrative activities between the two Companies. Another area of concern would be the position's ability to determine the budget needs of SONOPCO based on operating goals that are established through this position's direction.

POSITION TITLE

EMPLOYEE

General Manager N.O. Contract Admin.

M. B. Hobby

VI. SCOPE

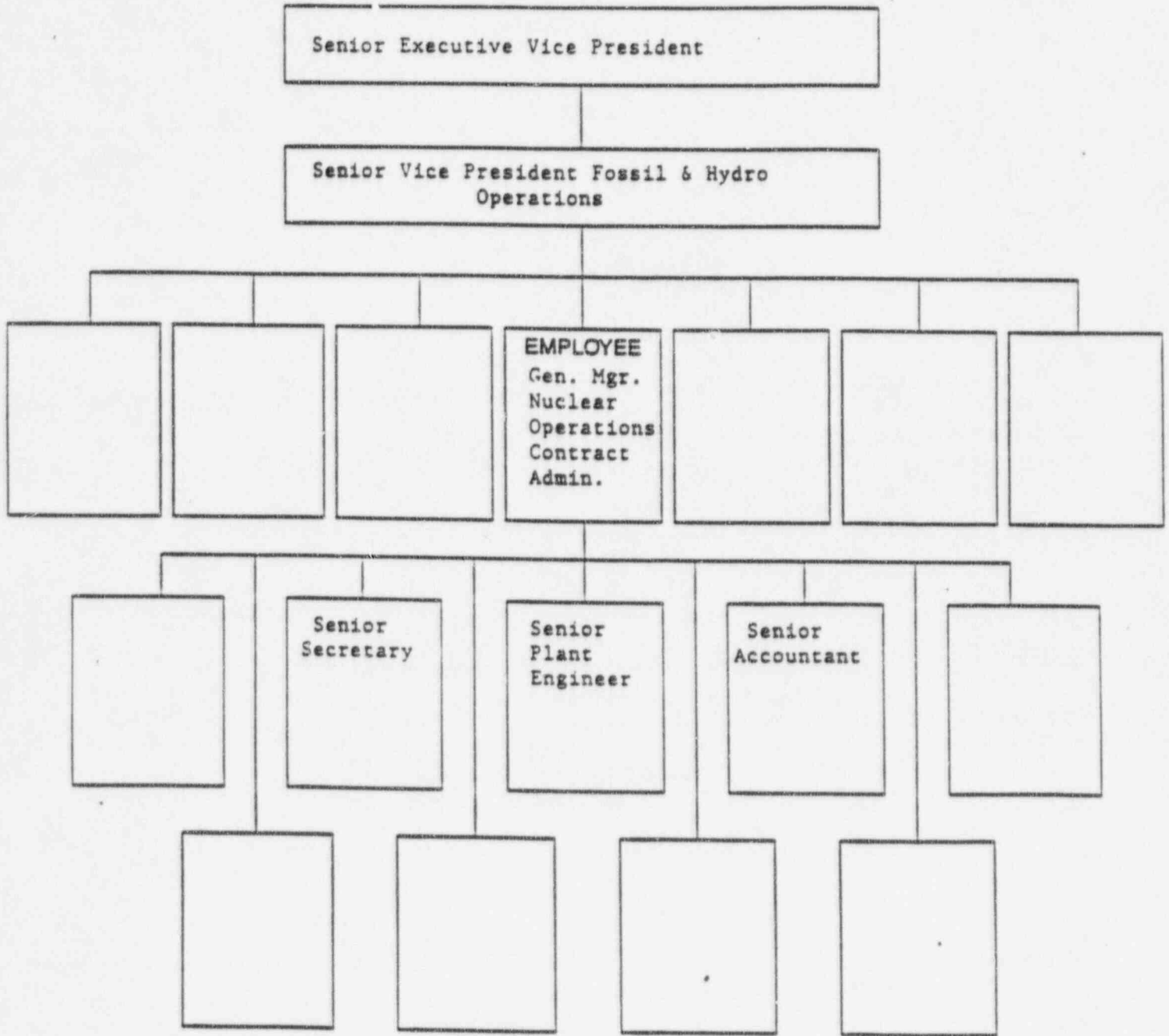
Provide annual statistics that convey the scope and volume of this position. (Revenue, customers, megawatts, capital, O & M, contracts etc.)

Plant Hatch 1630 MW
Plant Vogtle 2320 MW

\$250 MM Operating Budget Hatch and Vogtle
\$73 MM Capital Budget Hatch and Vogtle

VII. ORGANIZATION

Complete the organization chart below. Identify the two positions above this position, peer positions reporting to the immediate supervisor/manager and subordinate positions reporting directly to this position (use titles only).



	EXEMPT	NONEXEMPT	UNION	CONTRACT	TOTAL
PERSONNEL SUPERVISED	<u>2</u>	<u>1</u>	<u> </u>	<u> </u>	<u>3</u>

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD

HEARING

-----X

In the matter of: : 50-424-OLA-3
GEORGIA POWER COMPANY, et al. : 50-425-OLA-3
: Re: License Amendment
(Vogtle Electric Generating : (transfer to
Plant, Unit 1 and Unit 2) : Southern Nuclear)
: ASLEP No.

-----X 93-671-01-OLA-3

Wednesday, January 11, 1995

Hearing Room T 3B45

Two White Flint North

11545 Rockville Pike

Rockville, Maryland

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 a.m.

BEFORE:

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N W

WASHINGTON, D C 20005

1 APPEARANCES:

2

3 On behalf of the NRC:

4

5 CHARLES A. BARTH, ESQ.

6 JOHN HULL, ESQ.

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9 U.S. Nuclear Regulatory Commission

10 Washington, D.C. 20555

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12

13 On behalf of the Licensee:

14

15 ERNEST L. BLAKE, JR., ESQ

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1 APPEARANCES: (cont.)

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10 On behalf of the Intervenor:

11

12 MICHAEL D. KOHN, ESQ.

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WASHINGTON, D.C. 20005

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>BOARD</u>
Marvin Hobby	2273	2317	2388	2374	2273
	2274	2321	2392	2378	2275
	2276	2328	2393		2279
	2281	2331			2280
	2288	2334			2281
	2306	2336			2284
		2340			2290
		2350			2295
		2353			2303
		2359			2310
		2365			2321
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					2357
					2377
					2382
					2392

1 number one, our nuclear operations personnel are in
2 Birmingham, and while ultimately there may be a contract,
3 our job was to start in December of 1988. In my
4 discussions with Mr. Head --

5 CHAIRMAN BLOCH: That's enough. We'll take
6 another recess.

7 THE WITNESS: Okay.

8 (Whereupon, the proceedings were off the
9 record from 8:00 p.m. until 8:13 p.m.)

10 CHAIRMAN BLOCH: Back on the record.

11 The Licensing Board is concerned that it
12 really is unfair to Georgia Power to using these documents
13 in this way after their principal witnesses have left. On
14 the other hand, we also consider the information in the
15 documents relevant to important issues before us, and we
16 need it for our purpose.

17 So the resolution we wish to order is that we
18 will receive these documents in evidence, and Licensee
19 will have the opportunity to file whatever affidavits they
20 want to without any further cross examination by Mr. Kohn,
21 and those affidavits will be received just as if they were
22 live testimony.

23 Let's continue.

24 (Whereupon, the above-referred to
25 documents, marked as Intervenor's

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WASHINGTON, D.C. 20005

1 wait until there is a contract signed, and then the next
2 day say, "We have this group to monitor the performance of
3 our contractor, basically." You had to start back before
4 then.

5 So, in 1989, we were, at that time, getting
6 our people, our procedures in place so we could perform
7 our function for Georgia Power Company, whether or not we
8 had a contract.

9 ADMINISTRATIVE JUDGE MURPHY: However, I'm
10 trying to understand whether or not it was your
11 understanding that the reason for the establishment of
12 NOCA was the eventual -- the eventuality that there would
13 be a contract, and that there would be another company
14 operating your plants, and that NOCA was put in place to
15 monitor that contract.

16 THE WITNESS: I think that is correct. And
17 also, I think -- I was told specifically that NOCA was put
18 in place, not only because of what you said, which is
19 true, but also because our nuclear operations personnel
20 had been relocated to Birmingham. All of our nuclear
21 operations personnel relocated to Birmingham, and it was
22 anticipated that a separate organization would eventually
23 operate the nuclear power plants for the company.

24 CHAIRMAN BLOCH: Mr. Hobby, at the outset,
25 everyone was flush with the excitement of getting this

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WASHINGTON, D.C. 20005

1 to provide information to Mr. Dahlberg on nuclear safety
2 performance indicators, such things as trip counts, SALP
3 reports, INPO reports, etc. To your knowledge, was
4 anybody else in Georgia Power doing that at the time your
5 group was formed?

6 THE WITNESS: Yes, sir. When the nuclear
7 operations personnel were transferred to Birmingham, there
8 was a group of people who did such things.

9 ADMINISTRATIVE JUDGE CARPENTER: Who did they
10 report to?

11 THE WITNESS: I'm not sure. I know the
12 individuals, but I'm not sure exactly who they reported to
13 and their operational structure over at SONOPCO. In the
14 case of the Vogtle performance group, they would have
15 reported up to Mr. McCoy, but I'm not -- I'm sure I don't
16 believe they reported directly to Mr. McCoy, they would
17 have reported down the line.

18 However, it was anticipated that these Georgia
19 Power nuclear personnel -- when SONOPCO was incorporated,
20 that they would no longer be Georgia Power Company
21 personnel, they would become SONOPCO personnel down the
22 line, and our group was set up for the purpose of -- in
23 effect, monitoring the contractor to ensure that the
24 contractor was running the operation the way Georgia Power
25 Company determined it should.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

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WASHINGTON, D.C. 20005

V. Williams' Assertion That He Had Forgotten About The April 27 Memo

Williams asserted at the Enforcement Conference that, he had forgotten about Hobby's April 27 memo when he decided to eliminate Hobby's position. Mr. Kohn's argument that Williams' assertion is not credible is just that -- argument. The fact of the matter is Williams also testified at the DOL hearing that he had forgotten about the memo. (Tr. at 417). Mr. Kohn's attack on Williams' credibility ignores the disputed nature of the evidence and mischaracterizes the DOL record. (See Tr. at 314, 345, 417-18, 453-54, 470-72, 682-83, 778-80). That Mr. Kohn believes the evidence supports his argument does not make Williams' assertion either materially false or misleading.

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME II</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Wednesday, October 24, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Thomas J. McHenry	279	293	298	--
Alfred W. Dahlberg	302	321	361	--
Dwight H. Evans	363	376	--	--
Fred D. Williams	399	440	--	--
Thomas G. Boren	475	501	508	--
Lee Glenn	509	520	523	--
William R. Evans	525	539	--	--

<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
<u>Complainant's:</u>		
Nos. 36 & 36-A - Dahlberg Calendar	350	352
Nos. 37 & 37-A - Williams Calendar	460	460
<u>Joint:</u>		
No. 1 - Stipulation	398	398

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
E. P. (Dennis) Wilkinson	544	557	--	--
Joseph M. Farley	564	579	--	--
R. P. McDonald	601	619	--	--
George F. Head	643	658	--	--
H. G. Baker	678	690	705	709

<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Complainant's:		
No. 38 - Wilkinson bio	548	548

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Jesse P. Schaudies, Jr.	716	725	--	--
Marvin B. Hobby	764	--	--	--
Donald W. Janney	765	772	--	--
Robert P. Edwards, Jr.	776	779	780	--
Carey Don Proctor	781	785	--	--

1 Q. And why not?

2 A. I didn't think it was necessary that he be there
3 when we were talking about the entire organization in terms
4 of the people.

5 Pat was not familiar with the other people in terms
6 of their performance and potential, and I didn't think it was
7 necessary and didn't ask him to come to Atlanta, I asked him
8 to continue to do what he was doing.

9 Q. Okay. Let me direct your attention now, Mr.
10 Dahlberg, to Tab 3 of Exhibit R-18. This is a memorandum
11 dated April 27, 1983 to Mr. Fred Williams from Mr. Marvin
12 Hobby marked confidential.

13 Have you ever seen this memorandum, Mr. Dahlberg?

14 A. I saw it once at the time I gave a deposition in
15 this case, but not prior to that time.

16 Q. So you had not seen the memorandum prior to the
17 initiation of this litigation?

18 A. That's correct.

19 Q. When did you first become aware of the existence of
20 this April 27th memorandum?

21 A. During this litigation.

22 Q. Was this memorandum -- Well, let me strike that
23 and ask you, in the deposition where you were questioned
24 about this memorandum, did you at that time have an
25 opportunity to review the memo?

1 MR. KOHN: Well, Mr. Dwight Evans testified that it
2 was on December 29th during his deposition, so I think we're
3 trying to pinpoint was it November 7th or nearly two months
4 later, and that's a big discrepancy.

5 MR. JOINER: That's a different meeting, your
6 Honor.

7 JUDGE WILLIAMS: Move on, please.

8 BY MR. KOHN:

9 Q. Mr. Dahlberg, you testified today that you never
10 saw an April 27th memo?

11 A. Not that I can recall, no, sir.

12 Q. Okay. And that is the one that Mr. Hobby drafted;
13 right?

14 A. I assume so.

15 Q. Okay. And at your deposition you said it's
16 possible you could have seen it; correct?

17 A. Yes.

18 Q. All right. So it's possible you may have seen that
19 memo?

20 A. Mr. Kohn, I said I don't recall seeing the memo. I
21 see thousands and thousands and thousands of memos. I may
22 have seen it, but I didn't see it long enough to recall it if
23 I ever saw it at all. I do not recall the document.

24 Q. And you decided that you were going to eliminate
25 Mr. Marvin Hobby's job during this management council meeting

1 A. No, sir, I never told him not to send the memo. I
2 just asked him to consider whether he really wanted to send
3 it out.

4 Q. Did you ever tell him to destroy the memo, or
5 destroy the original or the copies of the memo?

6 A. No, sir, I never did. I was trying to help Mr.
7 Hobby some in management style and how we can -- being a
8 negotiator and having been involved in many negotiations with
9 the company and all some of the best approaches to take at
10 working things out and resolving issues.

11 Q. Mr. Williams, was this memo or any of the subjects
12 that are addressed in the memo a factor in your decision to
13 eliminate Mr. Hobby's position?

14 A. No, sir. In fact, until he raised the issue here
15 with the Department of Labor I had even completely forgotten
16 the memo was ever written.

17 Q. Now, did you ever have an occasion to show the memo
18 to anyone in the company?

19 A. As I recall, I did keep a copy of the memo because
20 I wanted to read it in more detail, because I read it quickly
21 at the meeting and responded. I was going to return that
22 copy, and I did to Mr. Hobby though after I read it because I
23 wanted him to have the ability to do as I suggested if he
24 wanted to do that.

25 I think I showed it to my assistant, he remembers

1 me showing it to him, because a lot of the areas were more as
2 I saw personal concerns of Mr. Hobby, or frustrations or
3 gripes that he wasn't included on some memos and all, or
4 invited to some meetings, or wasn't informed or had
5 communications go through him to co-owners.

6 I think I showed it to him at -- I had a meeting
7 with Mr. Dahlberg a day or two after that, and it was a
8 routine meeting I was having with him as part of our
9 negotiations keeping him apprised of what was going on in the
10 negotiations.

11 I don't know whether I showed him that copy of the
12 memo or just talked to him about some of the concerns Mr.
13 Hobby was raising, whether I told him Mr. Hobby was raising
14 them or just his nuclear organization group he felt like was
15 having problems with.

16 I informed Mr. Dahlberg I thought we could work
17 those things out through the negotiations and through the
18 structuring of the company. I don't think Mr. Dahlberg was
19 concerned with that.

20 Q. Did you ever discuss the memo with anyone besides
21 the two individuals you've just identified?

22 A. Not that I remember.

23 Q. Did you ever show the memo to or discuss it with
24 Mr. McDonald?

25 A. No, sir.

1 I think we had to work that out. That's what I was
2 attempting to do on my fact-finding as you referred to it.

3 Q. And did you fact-finding -- then you determined
4 that the problem was a conflict between Mr. Hobby and Mr.
5 McDonald?

6 A. No, sir, I never said that.

7 Q. Well, I sort of inferred it from your statement
8 that Mr. Hobby wanted to run SONOPCO that I guess Mr.
9 McDonald would take exception to that.

10 A. No. I think what we were talking about is that he
11 kept raising the concern of whether Mr. Dahlberg was in
12 charge or Mr. McDonald was in charge, and Mr. Hobby seems to
13 be the only one that keeps raising that issue about Mr.
14 McDonald.

15 Q. Okay. But after Mr. Hobby raised that issue with
16 you, you went to President Dahlberg and discussed Marvin
17 Hobby's regulatory concern; isn't that correct?

18 A. No, sir. What I discussed with Mr. Dahlberg was
19 what I was seeing as far as our relationship with SONOPCO
20 that I was looking into, what was going on in our
21 negotiations with the co-owners. That's what I discussed
22 with Mr. Dahlberg.

23 Now, as far as the memo went, I didn't go through
24 the memo in detail with Mr. Dahlberg. In fact, I'm not sure
25 whether I showed him the memo.

1 I may have mentioned to him, in fact I think I did,
2 that Mr. Hobby and the NOCA group was concerned about being
3 left out of some meetings and some lines of communication,
4 and Mr. Hobby had a concern with Mr. McDonald's support. I
5 think that's about as far in detail, and I informed Mr.
6 Dahlberg that I was looking into this and working with
7 SONOPCO, the joint owners and Mr. Hobby, and that hopefully
8 we would get all this stuff worked out.

9 Q. Now, you were testifying earlier to the date you
10 met with Mr. Dahlberg about Mr. Hobby's memo; correct?

11 A. Well, I didn't meet with Mr. Dahlberg about Mr.
12 Hobby's memo. I had a routine scheduled meeting with Mr.
13 Dahlberg as part of the overall negotiations that were going
14 on.

15 Q. And that --

16 A. As I said, a day or -- it may have been the next
17 day or day or two after that. I just don't remember.

18 They were pretty -- I think we were having them
19 about once a week or once every other week I was meeting with
20 Mr. Dahlberg.

21 Q. Okay. Then I'm going to show you an excerpt from
22 your calendar beginning on April 27th and running through to
23 May 7th.

24 Mr. Hobby gave you the memo on the 27th; correct?

25 A. That's correct.

1 "I don't think I said it would be used to not form
2 it. What it would make it look like is here we are just
3 writing off a bunch of memos to each other over there and
4 accusing each other of things and all this and not helping
5 each other and not being responsive to each other."

6 Q. So you were afraid that Mr. Hobby's memo would be
7 viewed by SONOPCO as some form of accusation?

8 A. I think not from SONOPCO. I think from somebody
9 just looking in the files that we have all these memos saying
10 "I wasn't invited here, I wasn't invited there," yes, I
11 thought it looks like there's a bunch of accusations that
12 you're not doing your job, I'm supposed to be doing that,
13 when in fact some of the stuff he had in the memo was not
14 even factual and that, and people at Georgia Power were
15 aware. He just felt like he should be the one aware, not me
16 or not somebody else.

17 Q. Now, do you remember discussing Mr. Hobby's memo
18 with Mr. Edwards on the 28th?

19 A. No, not specifically. I may have mentioned that
20 Marvin had written me something, and I just don't recollect
21 whether I did or not.

22 Q. Well, do you have a vague recollection of it now?

23 A. No, I don't recall at all speaking with Mr. Edwards
24 on that subject.

25 It's hard to distinguish, because I was on an

1 investigative trip if you understand, I'm looking at the
2 relationship, what's going on, what are some of the problems,
3 how can we make it work out?

4 I probably discussed that with Mr. Edwards, not
5 specifically the memo.

6 Q Well, didn't you also talk with Mr. Grady Baker
7 about Mr. Hobby's April 27th memo?

8 A. I don't remember talking to Mr. Baker about it. I
9 may have, I just don't remember it.

10 Q. All right. If you'd look at your deposition, Page
11 59 beginning at Line 5, if you'll read through Line 10.

12 A. 5 through 10?

13 Q. Yes.

14 A. "You talked with Mr. Dahlberg and Mr. Baker about
15 Mr. Hobby's memo, is that correct, specifically what was in
16 the memo, some of the issues?

17 "Some of the issues probably, yes."

18 Is that it? I may have not -- as I said, that
19 doesn't mean I referred specifically to the memo, the issues
20 being there is confusion between what NOCA as you refer its
21 role is and what's SONOPCO and what's accounting.

22 That was the point that I was out looking trying to
23 find how to resolve those issues.

24 Q. I think you're misunderstanding my question. My
25 question was did you talk to Mr. Baker about it? Does this

1 refresh your recollection that you spoke to Mr. Baker about
2 Mr. Hobby's memo?

3 A. Mr. Kohn, as I just said, you asked me specifically
4 about the memo. I do not remember specifically saying "Mr.
5 Baker, Mr. Hobby wrote me a memo on April 27th that said
6 this."

7 I was meeting with my boss, Mr. Baker, periodically
8 since he and I were a negotiating team on all these issues.
9 Now, one of these issues was how was our relationship with
10 SONOPCO and Georgia Power and the co-owners and going to be
11 satisfied, formulated, negotiated?

12 I may have spoke to him about some of the issues,
13 some of the issues being about the agency and not having you
14 in some of the budget loops. I may have talked about some of
15 that.

16 About Mr. Hobby writing a memo of his concerns, no,
17 sir, I don't remember saying that.

18 Q. But you do remember telling Mr. Dahlberg --

19 JUDGE WILLIAMS: All right, come on. Let's move on
20 to something else. He's talked about this for the last ten
21 minutes.

22 BY MR. KOHN:

23 Q. Mr. Williams, you talked about a concern that
24 Marvin Hobby started shredding documents?

25 A. That's correct.

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME III</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Thursday, October 25, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

1 doing for us directly.

2 Q. Okay.

3 A. And of course his opinion was that we didn't need
4 that function.

5 Q. Was there any proposal or suggestion made at that
6 meeting to the effect that Mr. Hobby and his group should be
7 incorporated into the SONOPCO project?

8 A. Yeah, Mr. Dahlberg's response to Mr. Farley was
9 that, you know, that "We really don't need that, and why
10 don't you take these people in SONOPCO."

11 Q. Okay. Was there any decision on that subject?

12 A. No, there was no decision. It was a matter that
13 was put on the table for future discussion.

14 Q. Okay. Now, in that May 5th meeting, or whenever
15 the meeting occurred, but the meeting with Mr. Dahlberg and
16 Mr. Farley at which you discussed these matters, was there
17 any discussion there about the April 27th memorandum from Mr.
18 Hobby to Mr. Williams?

19 A. No. I never -- I was not aware of the April 27th
20 memorandum at the time of that meeting, and in fact --

21 Q. When did you become aware of it?

22 A. Fred Williams some times later mentioned the
23 memorandum to me, but he was unable to show me a copy of it
24 because he didn't have a copy, and the only time that I ever
25 saw the memorandum was in your office when you showed me a

1 copy after this proceeding had been initiated.

2 Q. And that was around the time your deposition was
3 going to be taken in this case?

4 A. Just a couple weeks before the deposition was
5 taken.

6 Q. Okay. There was no discussion of that memorandum
7 or the subjects in that memorandum at this May 5 meeting?

8 A. No.

9 Q. Was there any discussion in the May 5 meeting of
10 the Fuchko/Yunker proceeding or Mr. Hobby's involvement in
11 that proceeding?

12 A. I don't remember that being brought up.

13 Q. Mr. Baker, did Mr. Farley ever indicate to you that
14 he wanted to see Mr. Hobby terminated?

15 A. No.

16 Q. Did Mr. McDonald ever say to you that he wanted to
17 see Mr. Hobby terminated?

18 A. No.

19 Q. Did anyone ever mention to you a concern of Mr.
20 Hobby's that Georgia Power's nuclear operating licenses were
21 in jeopardy because Pat McDonald received his management
22 direction from Joe Farley and not from Bill Dahlberg?

23 A. No.

24 Q. Based on your observation, Mr. Baker, the position
25 that you held, who in your opinion did Mr. McDonald report

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME IV</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Friday, October 26, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

1 Q. And at that meeting Mr. Williams did tell you that
2 Mr. Hobby had shown him a memo?

3 A. No, he did not tell me that at that meeting. The
4 meeting had nothing to do with Mr. Hobby whatsoever.

5 My recollection of his telling me about the memo is
6 while we were getting ready to get on a plane either going to
7 or from that meeting.

8 Q. Okay. Then going to or from that meeting Mr.
9 Williams mentioned to you that Mr. Hobby had shown him a memo
10 and had taken it back; isn't that correct?

11 A. Yes.

12 Q. And Mr. Williams described to you his counseling of
13 Mr. Hobby in conjunction with Mr. Hobby showing him the memo;
14 isn't that correct?

15 A. I would say yes.

16 Q. To the best of your recollection, could this
17 conversation you had with Mr. Williams about Mr. Hobby's memo
18 have taken place -- Well, let me withdraw that.

19 To the best of your recollection it occurred on
20 April 28th?

21 A. My recollection doesn't give it that particular
22 date, but it certainly occurred on the way to and from a
23 meeting in Birmingham is my best recollection, and I don't
24 doubt April 28th if that was the date of that meeting.

25 Q. And if you would look -- there should be a set of

1 documents in front of you Respondent's Exhibit 3. From your
2 discussions with Mr. Williams this appears to be the memo
3 that Mr. Williams was discussing with you?

4 A. Mr. Williams mentioned the memo. I was shown this
5 during my deposition which was the first time I had ever seen
6 it, and just from its subject matter I assume this is what he
7 was talking about, but I -- it appears to have some
8 attachments that I don't know were attached even during my
9 deposition, I'm not sure.

10 MR. KOHN: No further questions, your Honor.

11 JUDGE WILLIAMS: Any cross-examination?

12 MR. WITHROW: Yes, your Honor.

13 CROSS-EXAMINATION

14 BY MR. WITHROW:

15 Q. Mr. Edwards, during the time while you were
16 discussing this memo with Mr. Williams, did you tell Mr.
17 Williams that you were concerned about the memo?

18 A. No.

19 Q. Did Mr. Williams tell you he was concerned about
20 it?

21 A. No, he did not.

22 Q. Did you tell Mr. Williams to have that memo
23 destroyed?

24 A. No.

25 Q. And is that the only conversation you ever had with

1 Mr. Williams about an April 27th memo from Mr. Hobby?

2 A. Yes, and the conversation really wasn't about the
3 memo. He wasn't describing, going into detail about the
4 memo. It was very a offhand conversation about the scene of
5 Marvin Hobby showing him this thing and kind of -- it was --
6 he was kind of disappointed with Marvin Hobby, but it wasn't
7 the details of the memo.

8 MR. WITHROW: That's all I have.

9 REDIRECT EXAMINATION

10 BY MR. KOHN:

11 Q. But the thrust of Mr. Williams' conversation would
12 be centered around the fact that Marvin Hobby had shown him,
13 given Mr. Williams a memo and that Mr. Williams somehow gave
14 it back to Mr. Hobby, and that was pretty much the sum and
15 substance of your conversation?

16 A. It wa like he showed him this memo, like he was mad
17 at Mr. Williams or something. It was just not a -- it was a
18 "He showed me this memo and he took it back" was sort of the
19 substance of it.

20 Q. And did Mr. Williams indicate that he thought he
21 should go back and have Mr. Hobby rewrite the memo?

22 A. No.

23 MR. KOHN: No further questions.

24 JUDGE WILLIAMS: Thank you for your time, sir. You
25 may be excused.

VI. Relocation Of Hobby's Office, Restriction Of His Access And Revocation Of His Parking Privileges

Mr. Kohn contends that GPC misled the NRC staff regarding the reasons for moving Hobby's office and revoking his Company badge and executive parking privileges. Mr. Kohn accuses Williams of misrepresenting his reason for relocating Hobby's office and the timing of that decision and the decision to revoke Hobby's parking privileges and access.⁴ Ironically, Mr. Kohn does not specify exactly those statements by Mr. Williams that he contends were false.

The fact of the matter is Mr. Kohn ignores Williams' complete statement on this subject at the Enforcement Conference, which was as follows:

MS. WATSON: On another topic, the Secretary of Labor also found that there was discrimination in changing Mr. Hobby's parking privileges and his building access. Can you briefly tell us what your reasons behind those were?

MR. WILLIAMS: Yes. Actually, it's a concern from the standpoint of nuclear safety because we were already informed, one, Mr. Hobby was eliminating his job. We had the discussions of trying to find a meaningful separation or another job. I had already moved Mr. Hobby's people up to the bulk-power market floor and absorbed those into the existing department that was already doing this job and left him in his office.

One day he came up, though, as we frequently were still meeting after that; and I might say the pipeline issue and all of this was even after the April 27th memo. Up to this time, I still had Mr. Hobby meeting with the joint owners working on these contracts, at least the technical portions of them, so I had no problem with Mr. Hobby continuing to function in those areas. It was just we didn't need a general manager's job at this level. It just was too expensive for the company to have that, and it was confusing from a reporting standpoint.

But he had come up to my office and said he was tired. I said, why are you tired? And he said, because I've been down shredding nuclear documents.

⁴/ The rest of this portion of Mr. Kohn's Response merely argues with GPC's rationale for taking these actions. These arguments have nothing whatsoever to do with alleged misrepresentations at the Enforcement Conference.

Having told Mr. Hobby we're going to eliminate his job and not being able to come to a reasonable settlement, that gave me some concern that a man was down there shredding some documents that I was unaware, so after that, and then a day or two later, I think, Mr. Boren, the Senior VP who had been part of our negotiations on separation, had seen Mr. Hobby come in through our executive garage and had somebody that we didn't know with him or he did not recognize. The way our executive garage is set up is, you came in with just a car access through one of these wooden doors and you didn't have to pass the guard to go inside, so you didn't have to sign anybody in. You could bring anybody in.

The combination of those two things and the fact that we had eliminated his job, I suggested to Mr. Hobby, you need to move on up to the floor where I was so I would know what's going on. I needed him to sign in every day just in my area for what I considered security reasons from the standpoint of the company and our nuclear program and other programs, and all I'd asked him to do during that period of time was to find another job, and I had offered eight or ten thousand dollars help to him from a consultant to help him find another job. I had to continually work with the personnel department to work with Mr. Hobby on looking for another job in the company. He never took any kind of opportunity to do any of that, and he just sat out his time. I said, there's no reason, then for you to be going anywhere else in the building. With my concern of safety, I want to know what you're doing, so be on my floor. Sign in. You only need to be on the first through the third floor, which is the human resources that does this type thing, and the nineteenth floor. In reality, once you're inside the Georgia Power building -- you may have been there -- you can go to any floor you want to, so that was not a big constraint.

As far as the parking place, we moved him from a covered garage on one side of the building to right outside the front door on the other side, still in the manager's level. We had a parking place for him. It wasn't like we told him to go find some place to park. We moved him from a free access area where we were concerned about him to one where he had to come by the guard.

MS. WATSON: That's all I have.

MR. WHEELER: Did other people on your floor also have to sign in?

MR. WILLIAMS: No.

MR. WHEELER: But he did?

MR. WILLIAMS: Again, the reason I was doing that was that I was concerned about the position and what went on. It was not because of any retaliatory. I was just concerned and would like to know what he was doing.

MR. REYES: Thank you for answering all our questions. We have no further questions at this time, and we want to close the meeting. Thanks.

(Conference Tr. at 48-51).

Mr. Kohn specifically claims that Williams made a misrepresentation in claiming that Hobby's shredding of nuclear documents was a reason for relocating Hobby's office.

Relying on Williams' DOL testimony, Mr. Kohn claims, "Mr. Williams already knew that the shredding of safeguards materials did not provide a basis for action taken." (Response at 33-34). Mr. Kohn once again ignores the totality of Williams' DOL testimony

To support his position, Mr. Kohn claims that Williams somehow admitted at the DOL hearing he had talked to John Lukehart about Hobby's shredding activities before he relocated Hobby's office, and learned that Hobby was authorized to engage in those activities. (Response at 33). That is not what Williams said. At the hearing, Williams testified he had never spoken to Lukehart, and therefore, did not learn before he relocated Hobby's office that Hobby's shredding activities were authorized. (Tr. at 474). Second, Williams testified that he only "later found and that [Hobby] had the right to, or . . . the responsibility" to shred the documents. (Tr. at 473). Thus, nothing Williams said at the Enforcement Conference is either misrepresentative or inconsistent with his DOL testimony.

2. The Timing

Further, Mr. Kohn specifically claims: "[D]uring the Conference Mr. Williams asserted that the taking of Mr. Hobby's executive parking privilege occurred at the same time his office was moved This assertion is false; removing him from his office and

taking his executive parking privilege and employee badge represented two separate acts." (Response at 35).

As Williams statement at the Enforcement Conference shows (Conference Tr. at 48-51), he was explaining his reasons for taking these actions and was not describing the timing of the two decisions. Nowhere in his statement did Williams say anything to the effect that he made those decisions at the same time. Rather, Williams merged discussion of the two decisions together merely to explain his reasoning. Williams testified in a similar manner at the DOL hearing. (Tr. at 434-37). Mr. Kohn's claim of misrepresentation is no misrepresentation at all.

In The Matter Of:

*IN THE MATTER OF MARVIN B. HOBBY v.
GEORGIA POWER COMPANY*

*PREDECISIONAL ENFORCEMENT CONFERENCE
October 4, 1995*

*BROWN REPORTING, INC.
ATLANTA, AUGUSTA, CARROLLTON, ROME
1100 SPRING STREET
SUITE 750
ATLANTA, GA USA 30309
(404) 876-8979 or (800) 637-0293*

*Original File 1004hobb.asc. 52 Pages
Min-U-Script® File ID: 1456496487*

Word Index included with this Min-U-Script®

ENCLOSURE 2

(1) to be?

(2) MR. WILLIAMS: That's correct.

(3) MR. URYC: You were giving him that
(4) direction, and this is the work product that he
(5) brought to you in response to your direction of
(6) April 27th?

(7) MR. WILLIAMS: That's correct.

(8) MS. WATSON: On another topic, the
(9) Secretary of Labor also found that there was
(10) discrimination in changing Mr. Hobby's parking
(11) privileges and his building access. Can you briefly
(12) tell us what your reasons behind those were?

(13) MR. WILLIAMS: Yes. Actually, it's a
(14) concern from the standpoint of nuclear safety
(15) because we were already informed, one, Mr. Hobby was
(16) eliminating his job. We had the discussions of
(17) trying to find a meaningful separation or another
(18) job. I had already moved Mr. Hobby's people up to
(19) the bulk-power market floor and absorbed those into
(20) the existing department that was already doing this
(21) job and left him in his office.

(22) One day he came up, though, as we
(23) frequently were still meeting after that; and I
(24) might say the pipeline issue and all of this was
(25) even after the April 27th memo. Up to this time, I

(1) still had Mr. Hobby meeting with the joint owners
(2) working on these contracts, at least the technical
(3) portions of them, so I had no problem with Mr. Hobby
(4) continuing to function in those areas. It was just
(5) we didn't need a general manager's job at this
(6) level. It just was too expensive for the company to
(7) have that, and it was confusing from a reporting
(8) standpoint.

(9) But he had come up to my office and said
(10) he was tired. I said, why are you tired? And he
(11) said, because I've been down shredding nuclear
(12) documents. Having told Mr. Hobby we're going to
(13) eliminate his job and not being able to come to a
(14) reasonable settlement, that gave me some concern
(15) that a man was down there shredding some documents
(16) that I was unaware, so after that, and then a day or
(17) two later, I think, Mr. Boren, the senior VP who had
(18) been part of our negotiations on separation, had
(19) seen Mr. Hobby come in through our executive garage
(20) and had somebody that we didn't know with him or he
(21) did not recognize. The way our executive garage is
(22) set up is, you came in with just a card access
(23) through one of these wooden doors and you didn't
(24) have to pass the guard to go inside, so you didn't
(25) have to sign anybody in. You could bring anybody

(1) in.

(2) The combination of those two things and
(3) the fact that we had eliminated his job, I suggested
(4) to Mr. Hobby, you need to move on up to the floor
(5) where I was so I would know what's going on. I
(6) needed him to sign in every day just in my area for
(7) what I considered security reasons from the
(8) standpoint of the company and our nuclear program
(9) and other programs, and all I'd asked him to do
(10) during that period of time was to find another job,
(11) and I had offered eight or ten thousand dollars help
(12) to him from a consultant to help him find another
(13) job. I had to continually work with the personnel
(14) department to work with Mr. Hobby on looking for
(15) another job in the company. He never took any kind
(16) of opportunity to do any of that, and he just sat
(17) out his time. I said, there's no reason, then, for
(18) you to be going anywhere else in the building. With
(19) my concern of safety, I want to know what you're
(20) doing, so be on my floor. Sign in. You only need
(21) to be on the first through the third floor, which is
(22) the human resources that does this type thing, and
(23) the nineteenth floor. In reality, once you're
(24) inside the Georgia Power building - you may been
(25) there - you can go to any floor you want to, so

(1) that was not a big constraint.

(2) As far as the parking place, we moved him
(3) from a covered garage on one side of the building to
(4) right outside the front door on the other side,
(5) still in the manager's level. We had a parking
(6) place for him. It wasn't like we told him to go
(7) find some place to park. We moved him from a free
(8) access area where we were concerned about him to one
(9) where he had to come by the guard.

(10) MS. WATSON: That's all I have.

(11) MR. WHEELER: Did other people on your
(12) floor also have to sign in?

(13) MR. WILLIAMS: No.

(14) MR. WHEELER: But he did?

(15) MR. WILLIAMS: Again, the reason I was
(16) doing that was that I was concerned about the
(17) position and what went on. It was not because of
(18) any retaliatory. I was just concerned and would
(19) like to know what he was doing.

(20) MR. REYES: Thank you for answering all
(21) our questions. We have no further questions at this
(22) time, and we want to close the meeting. Thanks.

(23) (Proceedings concluded at 5:30 p.m.)

(24)
(25)

BEFORE THE
UNITED STATES DEPARTMENT OF LABOR

MARVIN B. HOBBY,	:	
	:	
Complainant,	:	<u>VOLUME II</u>
	:	
vs.	:	Case No. 90-ERA-30
	:	
GEORGIA POWER COMPANY,	:	
	:	
Respondent.	:	
	:	

Courtroom 901,
DeKalb County Courthouse,
556 N. McDonough Street,
Decatur, Georgia

Wednesday, October 24, 1990

The above-entitled matter came on for hearing,
pursuant to Adjournment, at 9:00 a.m.

BEFORE:

HON. JOEL R. WILLIAMS, Administrative Law Judge

APPEARANCES:

MICHAEL D. KOHN, Attorney,
DAVID K. COLAPINTO, Attorney,
Kohn, Kohn & Colapinto,
517 Florida Avenue, N.W.,
Washington, D.C. 20001;
Appearing on behalf of the Complainant.

JAMES JOINER, Attorney,
WILLIAM N. WITHROW, Attorney,
Troutman, Sanders, Lockerman & Ashmore,
1400 Candler Building,
Atlanta, Georgia 30303-1810;
Appearing on behalf of the Respondent.

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Thomas J. McHenry	279	293	298	--
Alfred W. Dahlberg	302	321	361	--
Dwight H. Evans	363	376	--	--
Fred D. Williams	399	440	--	--
Thomas G. Boren	475	501	508	--
Lee Glenn	509	520	523	--
William R. Evans	525	539	--	--

EXHIBITS:IDENTIFIED RECEIVED

Complainant's:

Nos. 36 & 36-A - Dahlberg Calendar	350	392
Nos. 37 & 37-A - Williams Calendar	460	460

Joint:

No. 1 - Stipulation	398	398
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1 Q. To your knowledge did Mr. Hobby avail himself of
2 any of these outplacement services that he had been offered?

3 A. No, sir.

4 Q. Was there any requirement set forth in this letter
5 or in any other of your conversations with Mr. Hobby that he
6 execute a release in favor of the company as a condition to
7 receiving this outplacement service?

8 A. No, sir, I don't think we ever got to a discussion.
9 He just flat refused it and we didn't get to discuss any of
10 the issues that went with it.

11 Q. Do you recall Mr. Hobby submitting you a bill for a
12 physical of his?

13 A. Yes, sir, I got it in just a month or so ago.

14 Q. Okay. And was that physical after the date of
15 elimination of his position?

16 A. Yes, sir, I think it was in May of this year. I
17 had told him -- he had inquired if he could go ahead and get
18 him a physical, a complete physical, that he hadn't had one
19 that year, and I said "Go ahead, sure." We were trying to
20 make this amenable separation, there was nothing harsh about
21 it or retaliatory or anything like that, I wanted to work
22 things out with him.

23 Q. Did the company pay for that physical?

24 A. Yes, they did.

25 Q. After the termination of Mr. Hobby's position, did

1 he continue to have his executive employment privileges,
2 executive parking privileges?

3 A. Immediately after the notice of this, yes, he did.
4 Shortly after that several things happened, I guess a couple
5 things.

6 He was still down -- I moved his -- the rest of the
7 staff we moved up to the 19th floor where I'm located,
8 incorporated the personnel to analysts or performance people
9 and his secretary within to the bulk power marketing services
10 group that already existed.

11 Was going to leave Mr. Hobby on the 14th floor in
12 his location down there. He came up one day and wanted
13 discussions or a meeting to talk with me, and he said he was
14 tired, and I asked him why he was tired, and he said because
15 he had been downstairs shredding a lot of documents, nuclear
16 documents out of the safe, which gave me some concern in the
17 situation we were in, "Why were you shredding these
18 documents?"

19 "Well, that's all right, you didn't know about it,
20 they were nuclear safeguard documents which, Fred, you didn't
21 have the right to see because you weren't cleared or
22 anything."

23 Well, I got a little concerned with Mr. Hobby being
24 down there, plus somebody had seen him one day in the garage
25 with somebody -- and you've got to understand with the

1 executive garage you come in through a lifting arm, and you
2 get inside the building and you do not have to pass the guard
3 desk, you're in the building there and you can go on up --
4 who was with Mr. Hobby, they didn't recognize him.

5 So it was those two issues right there, I got
6 concerned and I told Mr. Hobby I think it would be better if
7 he moved on up to the 19th floor where we were, and that I
8 would give him parking privileges in the manager's lot which
9 was right outside the front door, but you had to go past the
10 guard desk there, and not park in the executive garage any
11 more.

12 And also since that what your job, I had no
13 assignments for you or anything to do, all I wanted you to do
14 is find another job in the company or whatever, I wanted you
15 to be free to do that, that you only needed to actually come
16 to the 19th floor or the personnel offices on the first,
17 second and third floor where they do this impacted employees
18 looking for jobs. If he wanted to go to another floor, he
19 had just to pick up the phone and call somebody, or in fact
20 probably could walk once you're in the building, "I want you
21 to sign in every day so I'll know when you're in the building
22 and who's with you down there," and so I took his badge up
23 also.

24 Those all happened I think within that same time
25 frame right there about a week or so after the official

1 notice of his job being eliminated.

2 Q. After you sent Mr. Hobby this February 2nd letter,
3 did you advise the personnel department of his situation as
4 an impacted employee?

5 A. Yes, sir.

6 Q. Okay. And to your knowledge did Mr. Hobby ever
7 make any effort to work with the personnel department to find
8 another job?

9 A. No, sir. I touched base with them occasionally
10 just to see how things were going, because I wanted them to
11 make sure they understood Mr. Hobby was an impacted employee
12 and was available for other employment, and to my knowledge
13 they never knew that he contacted them.

14 Q. Did you ever do anything, Mr. Williams, to prevent
15 Mr. Hobby from finding another job?

16 A. No, sir. I tried to go out of my way to help him.

17 A. Mr. Williams, you've seen us do this before. I
18 want to get you to turn with me to Exhibit 22 which is Mr.
19 Hobby's letter to Admiral Wilkinson, and the first thing I
20 want you to do is to look at the fifth page, to look at some
21 statements that are attributed to you at the bottom of that
22 page and extending on to the top of Page 6.

23 Let me get you just to read that into the record if
24 you could.

25 A. "I told Fred that this was a regulatory concern, I

1 Q. And that really concerned you, didn't it?

2 A. Did it concern me?

3 Q. Yeah.

4 A. Yes, I had some -- well, really it concerned me
5 that Mr. Hobby came in my office and said he had been
6 shredding documents. He didn't say anything to me about that
7 before.

8 This was after the February 2nd meeting where I had
9 eliminated his position, had he's down shredding document.

10 Q. Okay. And as a result of shredding those
11 documents, you took away his employment badge and moved his
12 office -- correct? -- so you could keep closer contact,
13 closer observation on Mr. Hobby?

14 A. That's correct.

15 Q. Now, before you did those drastic steps, Mr.
16 Williams, hadn't you already spoken with a Mr. Lukehart and
17 Mr. Hobby, and didn't both of them tell you that the
18 documents that were being shredded were specific safeguards
19 documents which the NRC by regulation states that only Marvin
20 Hobby and Mr. Lukehart could shred, and that every document
21 which was shredded had to be logged in before it was shredded
22 and had to be logged out after it was shredded? Isn't that
23 the truth?

24 A. Yes, sir, it was later found out that he had the
25 right to, or he had the responsibility to do that.

1 As far as his position with the company, however,
2 we eliminated the position. That still gave me concerns, and
3 I thought maybe I should have more control over his everyday
4 functioning, and I think that's only natural on my part.

5 Q. And you told Mr. Hobby or Mr. Lukehart at that time
6 that "I don't want Marvin shredding those documents, I want
7 to shred them"?

8 A. I didn't even talk to Mr. Lukehart.

9 Q. What did you tell --

10 A. And I did not tell Mr. Hobby that at all. To be
11 honest with you, I had never talked to him about that other
12 than I wanted him to move up to the 19th floor.

13 I never went and told him not to shred those
14 documents. I asked him how come I wasn't informed. He
15 informed me that he was the only that had a right to do it,
16 that I didn't. I think I testified to that before.

17 I inquired about that, I had an investigation
18 performed to find that out. I was given a report back on the
19 investigation. I didn't go back and talk to them.

20 MR. KOHN: No further questions, your Honor.

21 JUDGE WILLIAMS: Any redirect?

22 MR. WITHROW: No redirect, your Honor.

23 (Witness excused.)

24 JUDGE WILLIAMS: Why don't we take ten minutes at
25 this time.