

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Georgia Power Company: Vogtle Electric  
Generating Plant: Unit 1 and Unit 2

Docket Number: 50-424-OLA-3; 50-425-OLA-3  
ASLBP No.: 93-671-01-OLA-3

Location: Rockville, Maryland

Date: Thursday, September 28, 1995

Work Order No.: NRC-322

Pages 15276-15482

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

HEARING

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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

Thursday, September 27, 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 9:00 a.m.

BEFORE:

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

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## I N D E X

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<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>IDENT</u>	<u>REC'D</u>
Int-II-83	Vogtle Special Team		
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PREFILED TESTIMONY OF MR. HOBBY BOUND INTO TRANSCRIPT  
 FOLLOWING PAGE 15296

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

9:05 A.M.

1  
2  
3 MS. YOUNG: Judge Bloch, have you determined  
4 whether there is a way to recapture what happened at the  
5 end of yesterday's session, which seems to be absent from  
6 the transcript?

7 CHAIRMAN BLOCH: The only thing I can think of  
8 is that we would have a discussion of it. May I ask the  
9 reporter whether there might be a record of things that  
10 weren't transcribed at the end of the day?

11 THE COURT REPORTER: (Inaudible)

12 CHAIRMAN BLOCH: It may or may not exist in  
13 the magnetic media?

14 THE COURT REPORTER: Right.

15 MS. YOUNG: Mr. Kohn doesn't order next day  
16 delivery of a transcript. He doesn't even know whether  
17 some of the issues that he asked about, since it was his  
18 cross, survived.

19 CHAIRMAN BLOCH: Was it -- was it a portion of  
20 his cross that's missing?

21 MS. YOUNG: I think so.

22 MR. MICHAEL KOHN: I guess Intervenor would  
23 like to take a brief moment to look at the transcript just  
24 to see. I don't think there's anything that can't be  
25 recreated starting today.

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1 I would also like to note to expedite the  
2 matter, the Board yesterday requested Intervenor to locate  
3 where on the transcript they believed Mr. Hobby's  
4 testimony was relevant.

5 And rather than orally arguing that, we  
6 submitted that in writing for the Board and parties'  
7 consideration.

8 There are a number of outstanding issues  
9 everyone knows about. And I don't know if the Board has a  
10 preference of doing those in the morning or just wait  
11 until this panel is over. But we have a lot of  
12 outstanding issues.

13 CHAIRMAN BLOCH: I think we'll handle whatever  
14 outstanding procedural issues there are after the panel.

15 MR. MICHAEL KOHN: Okay.

16 MR. BLAKE: I thought that's what the Board  
17 said yesterday.

18 CHAIRMAN BLOCH: Yes, that's right.

19 MR. MICHAEL KOHN: And I guess if Intervenor  
20 could just have a few moments to review this transcript, I  
21 think it would be helpful.

22 CHAIRMAN BLOCH: Okay. After we do that, I do  
23 think we can -- well, I have a brief statement to make for  
24 the record, and then I think we have to handle -- I think  
25 we should handle whether or not Mr. Hobby should be called.

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1 (Pause)

2 CHAIRMAN BLOCH: You let us know when you're  
3 ready to proceed.

4 MR. MICHAEL KOHN: Okay.

5 (Pause)

6 CHAIRMAN BLOCH: Oh, we're not?

7 MS. YOUNG: No.

8 CHAIRMAN BLOCH: Okay, why do you want us --  
9 do you want to be on the record or not?

10 (Whereupon, the proceedings went off the  
11 record at 9:11 a.m. and resumed at 9:11 a.m.)

12 CHAIRMAN BLOCH: We've been dealing with a  
13 problem in the transcript. A portion of the testimony  
14 taken yesterday is not in the transcript at this time, and  
15 we've been unable to ascertain whether that portion of the  
16 transcript can be reconstructed.

17 Mr. Kohn has reviewed the transcript in its  
18 current format, and believes, has stated that he can --  
19 has stated that he can conduct that portion of the cross  
20 again today without being prejudiced.

21 I -- in reflecting on yesterday's proceedings,  
22 I recalled having asked the panel in which Mr. Skinner was  
23 a participant a question concerning opinion about whether  
24 calibration of the Calcon sensors could have been  
25 accomplished the first time, whether an adequate

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1 engineering review would have resulting in discovering  
2 deficiencies and therefore in correcting the procedures  
3 that would be corrected the first time it was changed.

4 And Mr. Skinner said he would reflect on that.  
5 And I recall that we did not get back to that subject.

6 If there's no objection, I would suggest that  
7 Mr. Skinner can submit an affidavit on that point when  
8 he's ready to respond.

9 Are there comments on that way of proceeding?

10 MR. BLAKE: Now I have a problem with doing  
11 that because, in fact, I recall the question and didn't  
12 think that you accurately put the question. I opted not  
13 to try to correct it, but rather depending on what Mr.  
14 Skinner said, which would be the real evidence, not were  
15 you putting in your question, I thought I could just avoid  
16 the need to have an exchange with you.

17 CHAIRMAN BLOCH: Maybe a better way would be  
18 for you to also state your view of what happened so that  
19 he can consider both, the portion of the record in which I  
20 have asked the question as well as the way you want to ask  
21 it.

22 MR. BLAKE: I can't do it exactly. But I do  
23 recall at least one problem that I had with your question.  
24 Your question assumed that they hadn't tried to do -- make  
25 any corrections to the calibration procedure until after

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1 the event.

2 And I think that there's testimony in this  
3 proceeding that they realized there was a problem with the  
4 calibration procedure and at least had had one iteration  
5 of trying with the vendor to correct the calibration. I  
6 think Mr. Ward testified to that earlier.

7 And although that hadn't corrected itself,  
8 there was another attempt afterwards. And I think it was  
9 the third or fourth finally that wound up with one that  
10 apparently works.

11 CHAIRMAN BLOCH: Well, a more precise  
12 statement --

13 MR. BLAKE: Yes, and your -- I thought yours  
14 really said -- read out of what had been in the record,  
15 this sort of attempt to try to do it and another attempt  
16 to try to do it.

17 And whatever it was, Judge Bloch, I don't have  
18 it in front of me, but I at least had that sense. And as  
19 I have indicated, I was really going to wait and see what  
20 -- what the testimony was before I opted to challenge it.

21 CHAIRMAN BLOCH: I was aware of two attempts.  
22 You're stating now there might have been more than two?

23 MR. BLAKE: I think there were three at a  
24 minimum.

25 CHAIRMAN BLOCH: But in any event, the

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1 question was whether when they did it the first time, and  
2 if there was a second time --

3 MR. BLAKE: Yes.

4 CHAIRMAN BLOCH: -- did -- was the engineering  
5 review of what they got back from Calcon adequate before  
6 they implemented in the plant procedures?

7 MR. BLAKE: Okay. Well, maybe this is enough  
8 to at least alert Staff Counsel as to what -- what I had  
9 on my mind. And then I'll back away at this point and say  
10 --

11 CHAIRMAN BLOCH: Do you have a problem with  
12 that, Mr. Kohn?

13 MR. BLAKE: -- that the affidavit is fine.

14 MR. MICHAEL KOHN: No, Your Honor.

15 CHAIRMAN BLOCH: Of course, Staff Counsel, do  
16 you have a comment on this questioning?

17 MS. YOUNG: We just have to locate the point  
18 in the transcript where this came up so we can match those  
19 words with what you said this morning. And Mr. Skinner is  
20 looking now and we'll get back to you.

21 CHAIRMAN BLOCH: Now the second matter I'd  
22 like to discuss is that Mr. Blake, I think twice  
23 yesterday, raised what obviously is an important point for  
24 him, and has to do with whether or not the Board has been,  
25 in some way, steering the proceedings through questions

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1 that the Board has been asking.

2           And I'd like to say that there are different  
3 questions about how judging should take place. And my  
4 style is to be continually listening to the record and  
5 obtaining my best understanding of it.

6           And the questions I asked yesterday were based  
7 on my best understanding of the record, which sometimes  
8 isn't perfect.

9           A reason I ask questions like that is because  
10 by surfacing my present views of the record, I can get  
11 further information that may change my views.

12           I was particularly interested in getting the  
13 opinions of the panel yesterday on the questions I asked.  
14 It -- it could give Counsel a feeling that the record is  
15 being steered. I understand that.

16           On the other hand, it is an honest surfacing  
17 of some of the present views that I hold in an effort to  
18 examine them in the light of day, and to allow the parties  
19 to know what those views are so that they also can  
20 challenge them.

21           I suspect, in thinking about the record, that  
22 Mr. Kohn may have also had problems of thinking that the  
23 record was being steered also and not always in his favor  
24 at all.

25           But I just want to comment on what I think I'm

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1 doing. And I do understand the nervousness of the parties  
2 when that kind of questioning takes place.

3 Mr. Kohn, you had a matter that you wanted to  
4 talk about?

5 MR. MICHAEL KOHN: Yes, Your Honor. Yesterday  
6 there was discussion on the record, that remains on the  
7 record, at the end of the day concerning the Staff panel  
8 testifying today. And the record establishes the  
9 following: that Intervenor --

10 CHAIRMAN BLOCH: Okay, now just before we  
11 continue further, I made a ruling yesterday and then asked  
12 for a written motion on the subject if you wanted to make  
13 it. Is it really important to do this orally, at this  
14 time?

15 MR. MICHAEL KOHN: No, actually I didn't  
16 realize we were requested to do it by written motion. I  
17 can do the --

18 CHAIRMAN BLOCH: Probably the ruling is no  
19 longer in the records. Yes? You're talking about your  
20 assertion that the Staff --

21 MR. MICHAEL KOHN: Expert.

22 CHAIRMAN BLOCH: -- has said this is not an  
23 expert panel, right?

24 MR. MICHAEL KOHN: Correct.

25 CHAIRMAN BLOCH: And you believe you have

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1 found a citation for that? And since we have ruled that  
2 this testimony will go forward, the only question is some  
3 kind of relief that you might be due.

4 And therefore, that can be handled by written  
5 motion.

6 MR. MICHAEL KOHN: Okay.

7 CHAIRMAN BLOCH: Now on the question of Marvin  
8 Hobby on which you've now filed a motion, I'd like to ask  
9 whether -- what the relevance of the offered testimony is  
10 to the questions before us.

11 I see the testimony to which you're keying it,  
12 which has to do with the decision about Mr. Bockhold.

13 The testimony seems to be that the decision  
14 was made by Mr. McDonald and not by someone else. Why is  
15 that relevant to the proceeding?

16 MR. MICHAEL KOHN: Do you have Mr. Hobby's  
17 testimony handy?

18 CHAIRMAN BLOCH: Yes.

19 MR. MICHAEL KOHN: Okay.

20 CHAIRMAN BLOCH: Well, the proposed pre-filed  
21 testimony.

22 MR. MICHAEL KOHN: Yes.

23 CHAIRMAN BLOCH: Is that what you're --

24 MR. MICHAEL KOHN: I think what Mr. -- the  
25 testimony from Mr. Matthews was that Mr. Hairston and Mr.

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1 McCoy, at this April 30 meeting, defended their decision  
2 to keep Mr. Bockhold in and explained their reasoning for  
3 it.

4           What is important is looking at the judgement  
5 of Georgia Power's officials at that meeting. When it is  
6 -- when the testimony indicates that before Mr. McDonald  
7 and Mr. Hairston took over, at the -- when I say "before,"  
8 just at the time they were taking over, the current  
9 Georgia Power management in charge of nuclear was in the  
10 process of removing Mr. Bockhold because they believed he  
11 was untruthful.

12           Now, I think it shows a lack of character and  
13 judgement for a new organization to come in and allow Mr.  
14 Bockhold to stay without -- without apparent good cause  
15 based on NRC's perception at that time and Georgia Power's  
16 own internal management perception at that time.

17           And what happens is that Georgia Power, after  
18 the NRC meeting, continued to keep Mr. Bockhold in as  
19 General Manager after the cavalier cowboy meeting.

20           So at this point in time, they now know that,  
21 or at least should have known that, high level executives  
22 of Georgia Power, their immediate predecessors, decided  
23 that Mr. Bockhold had to go because he was untruthful.

24           The NRC called them in to a meeting and said,  
25 "Your plant is being operating cowboy cavalier." And then

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1 following that, they take no action to remove Mr.  
2 Bockhold. And then you take the other taped evidence that  
3 there was no corrective actions at the plant to alleviate  
4 this problem.

5 And I think it is relevant to the issues at  
6 hand in this proceeding.

7 CHAIRMAN BLOCH: Well, it's obvious that at  
8 any time, the company could have fired Mr. Bockhold. Do  
9 you really want us to reexamine the personnel issues  
10 involved at the time that Mr. McDonald took over to see  
11 whether or not he was correct at that time?

12 I just don't see the relevance to the issues  
13 in this case. That may have something to do with why Mr.  
14 Bockhold was around.

15 But whoever was around during this period is  
16 whose behavior we're trying. I don't see why it matters  
17 who hired him, who fired him, anything like that.

18 MR. MICHAEL KOHN: I think it just simply goes  
19 to the judgement of Mr. Hairston and Mr. McDonald to allow  
20 Mr. Bockhold to remain in place when they were  
21 reconfiguring the SONOPCO organization. That's the sole  
22 purpose at this point.

23 MR. BLAKE: Judge Bloch --

24 MR. MICHAEL KOHN: In other words --

25 MR. BLAKE: -- it doesn't go to that. That's

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1 the problem. That's just one of the problems with this.  
2 First of all, we've got hearsay here in the way of  
3 testimony.

4 But there's not even an iota of evidence being  
5 proposed that Mr. Head or Mr. Howard or Mr. -- indeed Mr.  
6 Hobby went to Mr. McDonald or Mr. Hairston and said  
7 anything about this.

8 Where is that evidence that they ignored all  
9 this hearsay stuff? We didn't even have that and now  
10 we're going to hold it against them that they allowed Mr.  
11 Bockhold to stay on despite this when nobody even says  
12 they got -- they were made aware of it? Where's that?

13 This is very inappropriate and very  
14 potentially prejudiced material to come in through hearsay  
15 in this form at the end, on the very creative, albeit, but  
16 I don't think appropriate basis which is offered.

17 You'll recall yesterday, the attempt was to  
18 say it came out because of my cross examination of the  
19 panel. Not so.

20 That this cite is to their own examination of  
21 the panel who was on, and it's a creative way of  
22 attempting to do it at this juncture. But I think it  
23 would be -- because of its relevance, because of the lack  
24 of link, I think it would be inappropriate to allow this  
25 as evidence at this juncture.

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1 I want to point out to the Board that  
2 Intervenors also tried to get the same story into the  
3 record during the illegal license transfer, and for  
4 reasons that aren't articulately helpful for here.

5 Nevertheless, it was stricken at that juncture  
6 from Mr. Hobby's pre-filed testimony.

7 Intervenor has been told several times now to  
8 come forward with their witnesses in a timely way. And I  
9 understand the link that they're trying to make to this.

10 But frankly, I don't think it's a good enough  
11 link to provide the basis at this juncture.

12 CHAIRMAN BLOCH: Does Staff wish to comment?

13 MR. BARTH: Your Honor, the hiring and firing  
14 of personnel in regard to alleged false statements made to  
15 the NRC on diesel start counts has never been an issue in  
16 this case.

17 This is a new issue which is pretty much  
18 unrelated to whether or not they had made  
19 misrepresentations which we're supposed to be trying now.

20 I think if you look at the two pages proffered  
21 to you by Mr. Kohn in the pre-filed testimony of Mr.  
22 Hobby, it just does not relate to any issues that are  
23 before the Board now.

24 It's inappropriate. It's -- it adds a new  
25 issue and it would amend their contention.

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1           Putting that aside, we have never -- this  
2 phase were we considered whether or not they made false  
3 statements regarding the diesel start counts of the April  
4 9 letter, the April 19th LER or other representations.

5           This is not part of that issue. It has  
6 nothing to do with it. And I'd suggest that you deny the  
7 motion, Your Honor.

8           CHAIRMAN BLOCH: Thank you. For the purpose  
9 of having a complete record, I would like to bind in the  
10 pre-filed testimony of Marvin Hobby --

11           MR. MICHAEL KOHN: Your Honor --

12           CHAIRMAN BLOCH: -- as an exhibit and not  
13 evidence. Yes, Mr. Kohn?

14           MR. MICHAEL KOHN: I'd just like to mention  
15 that what makes this highly relevant is Mr. Hairston's  
16 testimony in rebuttal about what happened during the April  
17 30 meeting.

18           He -- and if you take that, Mr. Hairston's  
19 testimony is contradicted by Mr. Matthew's testimony about  
20 the subjects discussed and the thrust of the meeting.

21           And this testimony is important because it now  
22 emphasizes that when Mr. Hairston and Mr. McCoy entered  
23 that April 30 meeting, they had, at their disposal,  
24 members tha hey -- that there was an internal process at  
25 Georgia Power where high-level officials had already

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1 decided that Mr. Bockhold didn't have the truthfulness.

2           So they weren't or shouldn't be hearing it for  
3 the first time from NRC. So I think it also helps put Mr.  
4 Hairston's perspective on what happened at that meeting  
5 into -- into better perspective.

6           And I think it's -- the key is that Mr.  
7 Hairston testified that the problems they were discussing  
8 were these problems before Mr. Hairston took over, this  
9 earlier phase. And that's not what the record indicates  
10 now, that the meeting was about.

11           And I think in fully understanding the context  
12 of that meeting, that the testimony is highly relevant.

13           MR. BARTH: Your Honor, I really would like to  
14 have additional comment to that because I think Mr. Kohn  
15 has pointed out the problem.

16           If you will look at the testimony of Marvin  
17 Hobby, he states, "Answer: Yes, in February 1988."

18           The meeting Mr. Matthews discussed was April  
19 30, 1990. It's -- that somehow Hobby was a result of a  
20 meeting occurred two years later, and they should have  
21 considered what happened two years later just defies  
22 reason, Your Honor.

23           If you look at the time sequence, Mr. Hobby is  
24 testifying about something two years before the meeting  
25 Mr. Matthews testified to.

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1           It's not relevant. It has nothing to do with  
2 it. And it's almost fatuous to suggest that Mr. Hairston  
3 failed to carry out his meeting responsibilities because  
4 of -- from 1988.

5           CHAIRMAN BLOCH: The motion is denied --

6           MR. BARTH: It does not prove or disprove in  
7 any way that the power company made false representations  
8 to the NRC, which is what we're supposed to be discussing.

9           CHAIRMAN BLOCH: The motion --

10          MR. BARTH: Thank you.

11          CHAIRMAN BLOCH: -- as not sufficiently  
12 relevant, as not sufficiently probative. And Mr. Kohn,  
13 will you provide the pre-filed testimony for the  
14 transcript so you'll have a complete record?

15          MR. MICHAEL KOHN: Yes, Your Honor.

16          MR. BARTH: I think your suggestion to bind it  
17 in, Your Honor, is well taken because it will show what is  
18 denied. Thank you.

19                 And I assume this will be marked as an  
20 exhibit?

21          CHAIRMAN BLOCH: No, it will just be bound  
22 into the transcript and you can refer to it by the page  
23 after which it was inserted.

24          MR. BARTH: Thank you.

25          CHAIRMAN BLOCH: Are there other preliminary

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PREFILED TESTIMONY OF MARVIN B. HOBBY

Q: CAN YOU STATE YOUR BACKGROUND AND POSITIONS YOU HELD AT GEORGIA POWER?

A: The prefiled testimony I previously submitted sets forth my background and positions I held at Georgia Power. I incorporate those portions here.

Q: ARE YOU AWARE OF ANY DISCUSSION WITHIN GEORGIA POWER'S CORPORATE NUCLEAR ORGANIZATION CONCERNING MR. BOCKHOLD'S SUITABILITY AS GENERAL MANAGER OVER PLANT VOGTLE?

A: Yes. In February of 1988, Mr. O'Reily, who was functioning as the corporate officer over nuclear operations, resigned and Mr. George Head was named as his replacement. Within days of taking over nuclear operations, Mr. Head called me and Mr. Morris Howard into his office to discuss nuclear operations.<sup>1</sup> During this meeting Mr. Head stated that he was very concerned about the performance of George Bockhold, General Manager of Plant Vogtle. In my presence, Mr. Head and Mr. Howard both agreed that Mr. Bockhold had a problem being truthful. In response to this concern, Mr. Head asked Mr. Howard if he would agree to replace Mr. Bockhold as General Manager of plant Vogtle. Mr. Howard agreed to relocate to the plant Vogtle site as the Plant Manager. It was further decided that I would replace Mr. Howard.

---

<sup>1</sup> Mr. Howard held the position of Manager of Nuclear Operation Services. Within the SONOPCO project, Mr. Howard's position would be equivalent to the General Manager, Plant Support over both plant Vogtle and plant Hatch. With respect to plant Vogtle, Mr. Shipman held the position of General Manager, Plant Support following the SONOPCO project reorganization.

Q: DID THIS CHANGE OCCUR?

A: No. While we were working to that end, Mr. McDonald was named to head Georgia Power's nuclear operations. Mr. McDonald took over in or about April 15, 1988. To the best of my knowledge, once Mr. McDonald arrived, activity towards replacing Mr. Bockhold came to an end.

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1 matters that must be handled before these witnesses  
2 testify? There being none, we will handle the other  
3 procedural matters later. Mr. Kohn?

4 ADMINISTRATIVE JUDGE MURPHY: Mr. Kohn, are  
5 you basically going to start over again? Is that your  
6 plan?

7 MR. MICHAEL KOHN: Basically, yes.

8 WHEREUPON,

9 LUIS A. REYES

10 ROY P. ZIMMERMAN

11 WERE RECALLED AS WITNESSES BY COUNSEL FOR THE INTERVENOR,  
12 AND HAVING BEEN PREVIOUSLY SWORN, RESUMED THE WITNESS  
13 STAND, WERE EXAMINED AND TESTIFIED AS FOLLOWS:

14 CROSS EXAMINATION

15 MR. MICHAEL KOHN: If I might ask the panel,  
16 yesterday there was some discussion on page seven of your  
17 testimony. And there's a "[3]" and first, I asked whether  
18 this -- the time period covered in the statement, "Georgia  
19 Power's overall performance in communicating with the NRC  
20 subsequent to the site area emergency," that paragraph, or  
21 excuse me that sentence or portion or a sentence, whether  
22 it referred to -- whether it was limited to the 1990  
23 event.

24 And can you now tell me whether it was limited  
25 to the 1990 events?

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1 MR. REYES: Are you asking me? Let me answer  
2 first and then -- and then Roy can answer. The basis for  
3 my statement is that all the activities subsequent to the  
4 site area emergency in March of '90.

5 And what I mean by that is if you look at the  
6 NRC instant investigation team report, there is -- it's a  
7 large report with a large number of issues that the NRC  
8 pursued.

9 In pursuing all those issues, including the  
10 diesel generator, but in pursuing all those issues, there  
11 was a large number of communications: oral, in writing,  
12 in meetings.

13 So it specifically was based on all the  
14 communications regarding to the site area emergency in my  
15 case. I was personally involved or my staff was involved  
16 with a large number of issues with a large number of  
17 communications, both orally and in writing.

18 BOARD EXAMINATION

19 CHAIRMAN BLOCH: Mr. Zimmerman, do you want  
20 to respond too?

21 MR. ZIMMERMAN: I support what Mr. Reyes just  
22 stated based on dialogues that I had with he, his staff  
23 and my staff.

24 CHAIRMAN BLOCH: But what is the time period?

25 MR. ZIMMERMAN: The time period is directly

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1 after the site area emergency up until around the August  
2 time frame.

3 MR. REYES: The same for me.

4 ADMINISTRATIVE JUDGE MURPHY: Mr. Reyes, can  
5 you identify the report of the incident and investigation  
6 team?

7 MR. REYES: I believe it's 14-10. I think  
8 that's the number.

9 ADMINISTRATIVE JUDGE MURPHY: NUREG 1410?

10 MR. REYES: Yes sir.

11 ADMINISTRATIVE JUDGE MURPHY: Okay, thank you.

12 CROSS EXAMINATION

13 MR. MICHAEL KOHN: Okay. Mr. Zimmerman,  
14 yesterday did you testify that the time period you were  
15 referring to in that sentence with the -- that I read  
16 covered from 1990 through 1995?

17 MR. ZIMMERMAN: Yes. This is upon reflection  
18 that the period of time that we wished the statement to  
19 address that Mr. Reyes went over is that time period from  
20 the site area emergency up until August, although the  
21 statement as written carries to a larger period of time  
22 beyond that.

23 MR. MICHAEL KOHN: So what you want to do is  
24 modify your testimony?

25 MR. ZIMMERMAN: That's correct.

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1 MR. MICHAEL KOHN: Now Mr. Zimmerman, we left  
2 off at -- or rather than saying we left off, let me just  
3 start over.

4 Is it your position that your overall -- let  
5 me rephrase it -- that the overall performance of Georgia  
6 Power during this time period, and if we might define the  
7 time -- are we defining the time period of January '90 or  
8 are we defining it from the site area emergency until  
9 August of '90?

10 What time period are you referring to?

11 MR. ZIMMERMAN: It would be inclusive of the  
12 time period that you just stated.

13 MR. MICHAEL KOHN: That I just stated?

14 MR. ZIMMERMAN: Right.

15 MR. MICHAEL KOHN: Okay. So would you -- so  
16 the time period that you're referring to does not include  
17 1989, it's 1990?

18 MR. ZIMMERMAN: We're starting with --

19 MS. YOUNG: Objection. That's asked and  
20 answered.

21 CHAIRMAN BLOCH: I -- I'll allow it under the  
22 circumstances.

23 MR. ZIMMERMAN: If I understand what you're  
24 attempting to do is you're trying to recapture our  
25 dialogue from yesterday on this topic.

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## BOARD EXAMINATION

1  
2 CHAIRMAN BLOCH: Well no, he wants the truth,  
3 but he wants to clarify the differences between what you  
4 may have said yesterday and today.

5 My recollection is that you -- you -- my  
6 understanding is that you're changing your testimony some.  
7 And he's trying to clarify how. Hold on a second.

8 MS. YOUNG: Judge Bloch, I think the  
9 recollection of what they said yesterday is just -- is  
10 totally gone. There's no transcript that -- it conforms  
11 to Mr. Kohn's recollection. There's none that conforms to  
12 yours.

13 And my recollection of what they said did not  
14 capture 1989. And testimony says "communications  
15 subsequent to the SAE."

16 CHAIRMAN BLOCH: No, you didn't --

17 MS. YOUNG: That's March of 1990.

18 CHAIRMAN BLOCH: I did not think he said  
19 anything about '89. But he did change his testimony about  
20 subsequent to 1990.

21 MS. YOUNG: Yes, but he didn't ask him about  
22 that. The pending question is, "Does it include events in  
23 '89?" The testimony says "Subsequent to the SAE," which  
24 is after 1990.

25 And Mr. Zimmerman has said that many times

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1 this morning.

2 CHAIRMAN BLOCH: That does seem not to be  
3 included in their testimony.

4 MR. MICHAEL KOHN: Okay. So then if I  
5 understand your --

6 CHAIRMAN BLOCH: Hold on just a second,  
7 please. (Pause)

8 CHAIRMAN BLOCH: Let's continue, please.

9 CROSS EXAMINATION

10 MR. MICHAEL KOHN: Can you tell me what  
11 discussions you had yesterday following your testimony  
12 until you appeared today? And I'll start with Mr.  
13 Zimmerman.

14 MS. YOUNG: Are you probing behind discussions  
15 with Counsel?

16 CROSS EXAMINATION

17 MR. MICHAEL KOHN: Well first, let's identify  
18 who you had discussions with.

19 MR. ZIMMERMAN: I had discussions with my co-  
20 witness hope about the very paragraph that we're  
21 discussing now in light of the fact that yesterday I  
22 indicated, after having read this several times, that the  
23 statement went beyond restart of the facility and site  
24 area events, that we should consider providing additional  
25 testimony to address the period -- better focus on the

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1 period in question associated with other communication  
2 activities with the Licensee associated with Georgia  
3 Power.

4 And that's the discussion that is currently  
5 going on now.

6 MR. MICHAEL KOHN: Okay. So if I understand  
7 reality, the original testimony was meant to discuss the  
8 period from following the site area emergency until 1995.  
9 And now you were reformulating the testimony as I asked  
10 and reinterpreting what's in here?

11 CHAIRMAN BLOCH: The record's. That's  
12 correct. It was already asked and answered though.

13 MR. MICHAEL KOHN: Your Honor, Intervenor now  
14 moves to strike the "[3]" statement, "Georgia Power's  
15 overall performance in communicating with the NRC  
16 subsequent to the site area emergency." And --

17 CHAIRMAN BLOCH: Why?

18 MR. MICHAEL KOHN: I think that was --  
19 yesterday, the Intervenor indicated that we believed that  
20 portion covered more than 1990.

21 And the Board asked that on direct -- excuse  
22 me, on cross we cover this. And if we could establish  
23 that it did, that could be stricken.

24 CHAIRMAN BLOCH: Well, my recollection  
25 yesterday was that they said it covered more than 1990.

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1 And then you asked them about what their reaction was  
2 about the 1990 time period, and they responded to that.

3           Whether -- whether or not we strike this,  
4 they're going to be able to testify about the 1990 time  
5 period. And they now state that that's what was  
6 originally intended. They've changed their mind.

7           I don't see any reason to strike it.

8           MS. YOUNG: And I'm looking at Transcript 15-  
9 272 where the witnesses testify that it's through the  
10 August 30th letter, the period through the August 30th  
11 letter.

12           And so the original testimony went to 1995,  
13 and the testimony has now been limited to the period only  
14 through August of 1990.

15           Why doest the testimony have to be stricken?  
16 It's the same period.

17           CHAIRMAN BLOCH: Okay, but what I'd like the  
18 parties to do is to resist the temptation to agree with  
19 the Board once we've ruled because that's just --

20           MR. MICHAEL KOHN: Have you ruled?

21           ADMINISTRATIVE JUDGE MURPHY: -- spinning  
22 wheels. Yes, I ruled.

23           MS. YOUNG: Sometimes it's hard to tell.

24           CHAIRMAN BLOCH: Oh, all right.

25           MR. MICHAEL KOHN: It wasn't for me.

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1 (Laughter)

2 MS. YOUNG: First time.

3 CHAIRMAN BLOCH: You didn't know I ruled? My  
4 apology, my panel didn't know I had ruled either, and  
5 we're not striking it.

6 CROSS EXAMINATION

7 MR. MICHAEL KOHN: So then if I understand it,  
8 it says -- the testimony, as written, says, "Subsequent to  
9 the site area emergency." So the period you feel  
10 comfortable with me asking you at this point is March 20  
11 or March 21, 1991 to September 1990. Correct?

12 MR. ZIMMERMAN: Yes.

13 MR. MICHAEL KOHN: Okay. And can you tell me  
14 if over -- since yesterday, you have reviewed any  
15 documents?

16 MR. ZIMMERMAN: I have looked at the May NOV,  
17 the original NOV that we issued.

18 MR. MICHAEL KOHN: Any other documents?

19 ADMINISTRATIVE JUDGE CARPENTER: May of what  
20 year, please?

21 MR. ZIMMERMAN: May of '94.

22 ADMINISTRATIVE JUDGE CARPENTER: Thank you.

23 MR. ZIMMERMAN: No.

24 CROSS EXAMINATION

25 MR. MICHAEL KOHN: And other than Mr. Reyes,

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1 have you spoken with anyone else about your testimony  
2 today since last night or since you left the stand  
3 yesterday?

4 CHAIRMAN BLOCH: About your testimony.

5 MR. ZIMMERMAN: Who is your question addressed  
6 to?

7 MR. MICHAEL KOHN: Mr. Zimmerman.

8 MR. ZIMMERMAN: Have I spoken to anybody else  
9 other than Mr. Reyes?

10 BOARD EXAMINATION

11 CHAIRMAN BLOCH: About your testimony.

12 MR. ZIMMERMAN: Right, no one other than  
13 Counsel.

14 MR. MICHAEL KOHN: And I suppose if I ask  
15 about those, there will be an objection.

16 (Pause)

17 CHAIRMAN BLOCH: Is everybody on the same  
18 track of trying to hope to finish today?

19 MR. MICHAEL KOHN: Yes. I'm just trying to  
20 reconstruct, and I'm having --

21 (Pause)

22 CROSS EXAMINATION

23 MR. MICHAEL KOHN: All right, now let's look  
24 at the time period, March 1990 to September 1990. Did you  
25 provide an assertion yesterday about your assessment of

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1 overall performance during that time period, Mr.

2 Zimmerman?

3 MR. ZIMMERMAN: My overall assessment that I  
4 recall providing yesterday was that I didn't -- did not  
5 see anything that would affect restart of the facility.

6 MR. MICHAEL KOHN: Were you involved in the  
7 decision to restart the facility?

8 MR. ZIMMERMAN: No, I was not.

9 MR. MICHAEL KOHN: If you had known at the  
10 time the restart decision was going to be made that  
11 material false statements concerning the number of diesel  
12 starts and issues related to air quality had been made to  
13 the NRC, would that give you pause for reconsideration?

14 MR. ZIMMERMAN: I would want to reflect on the  
15 facts associated with those concerns, try to understand  
16 the details associated with that.

17 MR. MICHAEL KOHN: So then those factors could  
18 result in a decision to delay restart until further  
19 information is obtained?

20 MR. ZIMMERMAN: The potential is there.

21 MR. MICHAEL KOHN: Do you agree, Mr. Reyes?

22 MR. REYES: I need to explain, and I'm going  
23 to answer your question. I had personal involvement in  
24 the decision and subsequent revisited that decision many  
25 times.

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1 MR. MICHAEL KOHN: I understand that. What I  
2 would like to do is right now, just focus your --

3 MR. REYES: Right.

4 MR. MICHAEL KOHN: -- your response.

5 MR. REYES: But let me -- I need to explain to  
6 you.

7 MR. MICHAEL KOHN: Yes, but I -- I think you  
8 may not understand the question. The question is an -- a  
9 the time the decision was made, we can talk about  
10 subsequent at some later point.

11 MR. REYES: Yes.

12 MR. MICHAEL KOHN: But at the time the  
13 decision was made, if you were told that false statements  
14 were made to the NRC concerning the number of diesel  
15 starts and factors related to air quality, would have  
16 given you pause with respect until the decision to restart  
17 the facility.

18 MR. REYES: No, and I need to explain that.  
19 We had -- I had staff that had looked at the air quality  
20 issue.

21 I have personal knowledge of the air quality  
22 issue in that following the ITT, Mr. Hunt another NRC  
23 inspector from the Atlanta office, looked at the air start  
24 system of the diesel generator.

25 The other issue was that even though I was not

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1 --

2

BOARD EXAMINATION

3

4

5

CHAIRMAN BLOCH: I'm sorry. When you say they looked, is it a physical examination? What are you saying?

6

7

8

MR. REYES: Yes sir. They were on site and they were witnessing the corrective actions of the emergency diesel generators.

9

10

11

And part of that was pursuant all the issues that surrounded the diesel failure. One of them was an air system.

12

13

14

15

And I had personal discussions with Mr. Hunt regarding an issue, and I was satisfied, personally satisfied, that the air issue, the air moisture, density, dew point, all those issues, were not a concern.

16

17

18

19

20

21

Now the other element in my decision, answering your question, is that although I was not at the April ninth meeting, prior to the April ninth meeting, we had staff on site witnessing the starts, the emergency diesel generator starts that were subsequently reported to the NRC.

22

23

24

25

We were satisfied that there was enough evidence that the problems with the diesels were corrected, and that we observed successful actions such as a diesel will start on demand.

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1 Now there were some failures in between, but  
2 the staff was satisfied, my staff was satisfied, that the  
3 repairs were successful.

4 So if the information provided in the count  
5 was different, you would have not changed -- it would have  
6 not changed those facts in my mind.

7 CROSS EXAMINATION

8 MR. MICHAEL KOHN: All right, I'm not talking  
9 about the facts related to it. I'm talking about would it  
10 give you pause to question other aspects and whether the  
11 licensee had been truthful in other areas if you were then  
12 told that there was a false statement with respect to the  
13 number of starts and a false statement with respect to air  
14 quality?

15 MR. REYES: No, because we had examined all  
16 the areas. I stated earlier that in the IIT report 1410,  
17 there was a large number of issues. We're discussing  
18 today one of those many, many issues.

19 We have examined each one of those issues, and  
20 we were satisfied that they were resolved. And we had  
21 information and personal verification that it was  
22 resolved. So the answer stays no.

23 BOARD EXAMINATION

24 CHAIRMAN BLOCH: Mr. Reyes, let's assume that  
25 that you're correct and that there was no substantive

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1 reason to not restart the plant, that the hardware was  
2 okay.

3 MR. REYES: Correct.

4 CHAIRMAN BLOCH: Would you nevertheless still  
5 be concerned and inquiring further if you found that there  
6 were misstatements being made to the NRC?

7 MR. REYES: Yes, we -- but -- but he asked me  
8 would I -- if I understood it right, the decision to  
9 restart the unit. We would have pursued whether it was  
10 12, eight, nine, 13, whatever the number was on the  
11 restarts and how we got presented the number we presented.

12 But that would have not, in my mind, my  
13 decision, if I was asked, prevent a unit from starting up.

14 CHAIRMAN BLOCH: Is that because of the  
15 importance of the matter in which the misstatement was  
16 made, or because you just wouldn't worry about any  
17 misstatement?

18 MR. REYES: Because in my mind, whether there  
19 were eight, nine, 12 starts, the number was not relevant  
20 in terms of its magnitude.

21 And I knew from personal monitoring by my  
22 staff that the issue of the starts was not well handled in  
23 terms of the paperwork. It was difficult -- it was  
24 difficult to come up with a number depending on which  
25 definition you used.

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1 Engineer, there were people taking notes of the activities  
2 and going.

3 But for example, the NRC inspector -- a  
4 witness that didn't keep the down loads either. We could  
5 tell you out to our records how many starts there were.

6 So in terms of putting -- answering your  
7 question: why I wouldn't be that much concern, I felt  
8 that -- I would have felt that there was element of --  
9 that would contribute to making those kind of  
10 informational performance issues.

11 CHAIRMAN BLOCH: I have some follow-up to your  
12 discussion. First, is Staff normally on site as they were  
13 for the IIT, or is that an usual presence for staff?

14 MR. REYES: Oh yes. The site area emergency  
15 is not an everyday occurrence. So --

16 MR. MICHAEL KOHN: Okay.

17 MR. REYES: -- I mean by its own definition,  
18 if you can -- the fact that --

19 MR. MICHAEL KOHN: Yes or no will get it.

20 MR. REYES: Yes, yes.

21 MR. MICHAEL KOHN: Now if the IIT is going to  
22 leave, and following that Georgia Power is going to be  
23 submitting additional documentation to the NRC concerning  
24 safety-related matters without the IIT looking over their  
25 shoulder.

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1           If you realize that there were false  
2 statements when the IIT was looking over their shoulders,  
3 does it give you pause to think that following that,  
4 Georgia Power could make additional false statements and  
5 there would be no check that you would have to determine  
6 that fact?

7           MR. REYES: No. Your statement is incorrect.  
8 Just because the IIT is there and leaves doesn't change my  
9 staff and my activities. Concurrent -- I mean, we're not  
10 in a vacuum. The fact that IIT is there doesn't mean that  
11 I pull all my inspectors away and send them away and I  
12 don't know what is happening every day.

13           I know that at some point in time, the unit is  
14 going to restart. In fact, next door, the other unit is  
15 running.

16           I mean, I had contemporaneous information from  
17 March 20th every day by the on-site inspectors on a lot of  
18 activities. I have independent verification of a lot of  
19 activities. So the answer is no.

20           MR. MICHAEL KOHN: On a daily basis -- I guess  
21 maybe we have a difference of understandings. It's my  
22 understanding that the NRC is constructed in such a way  
23 that the licensee is required to self report information  
24 and facts to the NRC. Is that correct?

25           MR. REYES: Correct, but that --

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1 MR. MICHAEL KOHN: All right.

2 MR. REYES: We don't ignore that. We do  
3 independent verification. If not, we would not have  
4 inspectors on site all the time.

5 MR. MICHAEL KOHN: All right. And how many  
6 inspectors are on site during a given shift?

7 MR. REYES: It depends. At the at time, we  
8 had three resident inspectors I think. I have to check  
9 the record. We either had two or three.

10 It's separate on the IIT. This -- reports to  
11 me. And we have a mandate to have 20 percent of our  
12 observations to be off-hours, and ten percent to be what  
13 we call deep back shift, which is midnight to four o'clock  
14 in the morning and Sundays.

15 So within those guidelines, we had exceeded  
16 that. I know we had exceeded that because the index of  
17 activity that was going on at that time was very high.

18 So we had a large number of independent  
19 observations, seven days a week, different hours.

20 MR. MICHAEL KOHN: Generally, how many hours a  
21 day is an NRC inspector on site, including weekends. Take  
22 a seven day week --

23 MR. REYES: Well, they work 40 hours a week as  
24 a minimum and 20 percent of that is off normal hours as a  
25 minimum. And ten percent of the 40 hours is a deep back

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1 shift. I thought I answered the question in terms of  
2 those are the minimum spread of off hours inspections and  
3 day inspections that we had.

4 BOARD EXAMINATION

5 CHAIRMAN BLOCH: Mr. Kohn, let me try this.  
6 Mr. Reyes, you're not testifying that when facts are  
7 supplied to the NRC, that the staff has the resources to  
8 check all the facts?

9 MR. REYES: No, no, no. I don't mean that at  
10 all. In this case, in the case of the IIT and site area  
11 emergency, we did more independent checks, not on every  
12 fact and not on every line item.

13 But there was a key decision we had to make.  
14 There were two decisions: 1) Did the event impact the  
15 unit two and should we shut down unit two? That's an  
16 online decision; 2) Were all the corrective measures in  
17 place, and should we let unit one restart?

18 There were a lot more than normal independent  
19 verification of those issues of that information for those  
20 decisions to be made.

21 CHAIRMAN BLOCH: Okay, now I understand that.

22 MR. REYES: Okay.

23 CHAIRMAN BLOCH: But Mr. Kohn's question was  
24 directed to a subsequent time --

25 MR. REYES: Okay.

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1 CHAIRMAN BLOCH: -- when the intense  
2 examination would be relaxed.

3 MR. REYES: Okay.

4 CHAIRMAN BLOCH: And his question was in that  
5 time, don't you have to rely on the truthfulness of the  
6 licensee?

7 MS. YOUNG: Judge Bloch, I'm not sure that was  
8 his question.

9 MR. MICHAEL KOHN: Yes, that was.

10 MS. YOUNG: The IIT left the site April  
11 second, 1990. The restart decision wasn't under April  
12 12th, 1990.

13 MR. MICHAEL KOHN: That was my question, if I  
14 didn't --

15 MS. YOUNG: Yes, but the witness has to  
16 understand the question. And if you change from what the  
17 witness's perception of how Mr. Kohn loosely stated it,  
18 you're going to get a different answer.

19 BOARD EXAMINATION

20 CHAIRMAN BLOCH: My question is, okay?

21 MR. REYES: Let me see if I understand.  
22 Regardless of whether it's the same as --

23 CHAIRMAN BLOCH: Okay, isn't it the case that  
24 after the plant goes up to power and the IIT leaves, that  
25 you then have to rely on the truthfulness of the licensee?

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1 MR. REYES: Oh, you have to. We have -- they  
2 have 1,000 people on site that work 24 hours, 364 days a  
3 year and we two or three inspectors. So clearly, we do  
4 not -- cannot independently verify every line item.

5 So you depend -- you depend on the licensee  
6 providing you accurate information. That doesn't mean you  
7 don't independently verify.

8 CHAIRMAN BLOCH: So I take it that the  
9 truthfulness of a licensee is very important in deciding  
10 that he can continue to operate a plant?

11 MR. REYES: Yes, on all communications, on all  
12 communications.

13 MR. ZIMMERMAN: What I also hear is that when  
14 we have a concern about complete and accurate information,  
15 we gravitate to the area of concern. And we will use our  
16 resources more to look at those documents, scrutinize  
17 those closer for accuracy.

18 CHAIRMAN BLOCH: So the difficulty is when  
19 there is a communication over which you have no special  
20 reason to inquire, and you just leave it because you've  
21 got no choice, right?

22 MR. REYES: But we knew that the information  
23 provided in the April ninth meeting was in error. And  
24 shortly after that, we received a lot of allegations that  
25 were relevant to those kinds of issues.

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1           And we spend an enormous amount of time  
2 following that same issue: communications, records,  
3 information provided.

4           In the period of March through August, the NRC  
5 spent thousands and thousands of inspection hours by us  
6 into that area because we were given a large number of  
7 allegations that, on face value, will raise that concern.

8           So we concentrated on looking into all those  
9 areas.

10           ADMINISTRATIVE JUDGE MURPHY: On April ninth,  
11 did you know that that information was in error?

12           MR. REYES: I was not in the meeting on April  
13 ninth, but we were not -- we did not know on April ninth  
14 that the number presented in the vu-graph was inaccurate.

15           We -- on April ninth, we did not know that --

16           ADMINISTRATIVE JUDGE MURPHY: Did you know it  
17 on April 12th when you made the --

18           CHAIRMAN BLOCH: Well, how about --

19           ADMINISTRATIVE JUDGE MURPHY: -- decision to  
20 restart?

21           CHAIRMAN BLOCH: How about on April tenth? Do  
22 you know if it was known on April tenth?

23           MR. REYES: What I do remember is learning  
24 about the inaccurate information subsequent to the  
25 decision to restart the unit and being asked the question:

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1 Do you change your mind? Should we have let the unit  
2 start up? Should we shut it down?

3 I do remember that question, but I don't --  
4 don't think it was on the 12th. To my best recollection,  
5 I concur on the letter letting the unit start up around  
6 the 12th.

7 And sometime shortly after that, we learned  
8 about the inaccurate information. And I was specifically  
9 asked, "Do you have any reservations on 1) letting the  
10 unit start up or shutting down both units?" And I didn't  
11 feel that way.

12 ADMINISTRATIVE JUDGE MURPHY: Do you remember  
13 how you learned about the inaccurate information.

14 MR. REYES: My recollection is that my staff  
15 received a phone call. And I don't remember, sadly, who  
16 and what date.

17 ADMINISTRATIVE JUDGE MURPHY: Phone call from?

18 MR. REYES: Georgia Power, and they informed  
19 us that the information provided in the April ninth  
20 meeting was inaccurate.

21 And I remember being asked if the information  
22 was inaccurate, a lower number of starts, would that  
23 change your mind on letting the unit restart and -- or  
24 shutting down all the units because of the information  
25 provided? And I didn't feel that way.

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1 CHAIRMAN BLOCH: Are you aware that on April  
2 tenth, Mr. Chaffee requested further information on  
3 starts?

4 MR. REYES: I know that -- I subsequently  
5 learned that there were some questions, but I didn't know  
6 that -- I didn't know on April 12th when I made that -- I  
7 concurred on the start up in writing that there was an  
8 issue, either Mr. Chaffee and Georgia Power, a request  
9 that they made.

10 I was not a party to that conversation.

11 CHAIRMAN BLOCH: Our record has a gap on  
12 whether or not Georgia Power ever came back and responded  
13 to that question. Do you know anything about whether or  
14 not they actually responded to that question?

15 MR. REYES: I don't know, Judge. I was not a  
16 party to the conversation and whether Mr. Chaffee followed  
17 up his request.

18 CHAIRMAN BLOCH: I'd like to ask a few  
19 questions because I think there was a difference. If  
20 Counsel wants to come back in, you may, but I think  
21 there's a difference between your view of the importance  
22 of successful starts and the some of Mr. Matthews'  
23 testimony yesterday.

24 MR. REYES: We probably have different views  
25 in some areas, yes.

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1 CHAIRMAN BLOCH: You heard his testimony  
2 yesterday?

3 MR. REYES: Yes. I'm not sure I recall all of  
4 it, but yes.

5 CHAIRMAN BLOCH: Would Counsel prefer  
6 acquiring this himself, or would he mind if I do it?

7 MR. MICHAEL KOHN: No, the Board can --

8 BOARD EXAMINATION

9 CHAIRMAN BLOCH: Did -- did you know at the  
10 time you authorized restart, what the cause of the site  
11 area emergency was?

12 MR. REYES: Well excuse me, the cause of the  
13 failure of the diesel to start during the site area  
14 emergency from -- yes. But I think we may be talking  
15 about levels of detail.

16 And what I mean by that is there are some  
17 situations where you have a component and equipment  
18 failure, and you cannot conclusively eliminate all the  
19 possible causes.

20 And you take some corrective actions and  
21 through some confirmatory actions, conclude or prove that  
22 I'm not sure which one of these elements caused the  
23 failure, but one of them did. And we have taken care of  
24 all three.

25 If I make my point, so I was satisfied that

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1 the instrument that malfunctioned, that they were the  
2 cause -- they were the cause of the diesel to restart --  
3 to start and quickly shut down.

4 And that subsequent testing, while being  
5 monitored by NRC staff, gave me assurances that the cause  
6 of the diesel failure was resolved.

7 I had enough reasonable assurance that by  
8 monitoring the repair and testing confirmatory testing  
9 activities that I have enough assurance that the issue was  
10 resolved.

11 CHAIRMAN BLOCH: Do you recall whether one of  
12 the causes that was suspected was intermittent failure?

13 MR. REYES: I don't recall that detail.

14 CHAIRMAN BLOCH: Do you recall whether there  
15 was any suspicion of whether cleanliness problems might  
16 have contributed to the failures?

17 MR. REYES: Yes, because there was a  
18 discussion about -- right away the question came up. In  
19 Region Two, we have 33 reactors, and one other reactor has  
20 similar diesels and similar instrumentation.

21 And we had -- went back to the Duke Power  
22 Company Catawba site which had similar diesels, not  
23 exactly the same instrumentation, and pursued that.

24 So I knew there was a cleanliness issue. I  
25 recall there was a cleanliness issue. I don't recall the

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1 exact details of it.

2 But what we had to pursue -- and line I said,  
3 on-line all the time, one other plant has similar  
4 equipment. Could they have the same problem? Let's  
5 explore that.

6 CHAIRMAN BLOCH: But do you know whether or  
7 not there were some of the NRC people who were interested  
8 in numbers of starts as an additional assurance because  
9 they weren't clear on what the cause of the failure of the  
10 diesel was?

11 MR. REYES: Yes, there may have been. I don't  
12 recall. The number of the staff involved and all the  
13 issues with letting the unit restart, and I'm sure there  
14 may have been some.

15 CHAIRMAN BLOCH: Do you know whether or not it  
16 was the IIT that first expressed an interest in successful  
17 starts?

18 MR. REYES: I don't recall that.

19 CHAIRMAN BLOCH: Mr. Kohn? Okay, we can take  
20 our break now unless you have something that you want to  
21 follow up on immediately.

22 MR. MICHAEL KOHN: No, we can take a break,  
23 Your Honor.

24 CHAIRMAN BLOCH: All right, take a break for  
25 ten minutes.

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1 (Whereupon, the proceedings went off the  
2 record at 10:10 a.m. and resumed at 10:20 a.m.)

3 CHAIRMAN BLOCH: Am I in alignment with my  
4 higher power? Let's go.

5 CROSS EXAMINATION

6 MR. MICHAEL KOHN: Mr. Reyes, there is a --  
7 four issues I'd like to cover with you based on your prior  
8 responses. First is, you mentioned discussions with Mr.  
9 Hunt about air quality. Is that correct?

10 MR. REYES: Yes.

11 MR. MICHAEL KOHN: Is that discussions you  
12 personally had with Mr. Hunt?

13 MR. REYES: Correct.

14 MR. MICHAEL KOHN: And when did you have this  
15 discussion with Mr. Hunt?

16 MR. REYES: I don't know the precise date, but  
17 as my testimony summarizes, i responded to the site area  
18 emergency, and subsequently visited the site frequently  
19 and talked to the staff while they were back in the  
20 office.

21 And in one of those conversations, as he was  
22 briefing us on the progress of his activities, we talked  
23 about that topic.

24 MR. MICHAEL KOHN: So this was before Mr. Hunt  
25 left the site?

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1 MR. REYES: He went back and forth several  
2 times. This was done --

3 MR. MICHAEL KOHN: Well, let me rephrase the  
4 question. Is this before Mr. Hunt left the site for the  
5 last time associated with the site area emergency?

6 MR. REYES: I think that's correct.

7 MR. MICHAEL KOHN: And were you aware of  
8 discussions -- let me rephrase it. Was it Mr. Hunt's  
9 understanding that there were no high out of specification  
10 dew point readings --

11 MR. REYES: My recollection --

12 MR. MICHAEL KOHN: -- when -- I'm talking  
13 about this conversation, the discussion with Mr. Hunt  
14 before he left the site for the last time.

15 MR. REYES: My recollection of the discussion  
16 was in a more general term, but it was the same issue:  
17 whether presence of water or water in the system was an  
18 issue.

19 I don't recall that we got into the detail of  
20 dew point and things like that.

21 MR. MICHAEL KOHN: If the IIT had asked  
22 Georgia Power to obtain dew point readings and Georgia  
23 Power committed to obtain those dew point readings --  
24 rephrase the question to be more precise.

25 If the IIT asked Georgia Power to obtain dew

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1 point reading, and you do dew point reading, on March 28,  
2 1990, and a dew point reading was taken the next day, what  
3 would you anticipate Georgia Power's answer to be when IIT  
4 revisited the issue and asked, "What was your reading?"

5           Would you expect them to provide complete and  
6 accurate information with regard to that reading?"

7           MR. REYES: I don't understand the question.

8           MR. BLAKE: I don't either. Let's just have a  
9 reference to it.

10           CHAIRMAN BLOCH: Could you just -- could you  
11 make it -- break it up a little bit. It was too complex.

12                           CROSS EXAMINATION

13           MR. MICHAEL KOHN: The -- are you aware that  
14 the IIT, while they were on site, were asked to determine  
15 what the dew point of the air receivers were on March 28th  
16 or thereabouts?

17           MR. REYES: I don't recall. I don't recall  
18 whether they did or not.

19           MR. MICHAEL KOHN: Would you suspect that that  
20 would be a reasonable activity for the IIT to engage in,  
21 to determine the dew point of the system following the  
22 site area emergency?

23           MR. REYES: They had to determine the causes  
24 of the equipment failure. And they felt that was  
25 contributing, they could have asked and I --

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1 MR. MICHAEL KOHN: Okay. Now assuming they  
2 did ask for dew point readings to be taken on March 28th,  
3 1990 --

4 MR. BLAKE: Can we have a cite, please?

5 MR. MICHAEL KOHN: Yes, the IIT transcript  
6 from March 28th, 1990.

7 MR. BLAKE: It says they wanted the company to  
8 take dew point readings on the 28th? That's the  
9 representation?

10 MR. MICHAEL KOHN: That Georgia Power  
11 committed to taking dew point readings on the 28th.

12 MR. BLAKE: Let's just look at it, would you,  
13 so we don't have to argue about what it is. If you want  
14 to ask him whether or not then, now that he sees this,  
15 whether that was a reasonable posture that they prefer his  
16 staff to take off site, I don't have a problem with that.

17 MR. MICHAEL KOHN: Well, what I will do is  
18 wait for a break to pursue this so we can get the exhibits  
19 in line.

20 MR. BLAKE: That's fine.

21 MR. MICHAEL KOHN: We'll just revisit that  
22 one.

23 MR. BLAKE: Okay.

24 CHAIRMAN BLOCH: I have a different problem.  
25 I'm not sure why his statements about what would be

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1 reasonable for the IIT are relevant.

2 MR. MICHAEL KOHN: I don't know if I was going  
3 about what I wanted to get in a good manner. It's another  
4 reason why I'm going to revisit it, so I can reformulate  
5 that issue better for the Board.

6 You also indicated that you learned about an  
7 error in the count sometime after the plant was restarted.  
8 Is that correct?

9 MR. REYES: Yes. After the plant restarted, I  
10 became aware of a discrepancy on the vu-graph for the  
11 April ninth meeting.

12 CROSS EXAMINATION

13 MR. MICHAEL KOHN: And do you know who told  
14 you about the discrepancy?

15 MR. REYES: I don't know the details of who  
16 told me.

17 MR. MICHAEL KOHN: Do you know the date you  
18 learned about it?

19 MR. REYES: It was after the 12th when the  
20 plant restarted, but I don't know the exact date.

21 MR. MICHAEL KOHN: And do you know, was it  
22 after -- I mean, are you able to indicate whether it was  
23 after the LER was issued or after -- or in response to a  
24 June 28 letter, June 29 letter?

25 MR. REYES: No. I know it was shortly after

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1 the plant restarted on the 12th. but I couldn't frame it.  
2 If it was a week or three days, I don't recall that  
3 exactly.

4 I do recall the questioning of our decision  
5 once we got that information and we revisited it.

6 MR. MICHAEL KOHN: Okay. I'm not aware of  
7 anything in the record referring to such a communication  
8 in the --

9 MR. REYES: I thought the phone calls there --  
10 there were several phone calls made to the staff, to the  
11 NRC by Georgia Power regarding the count. And --

12 MR. MICHAEL KOHN: Are you referring to phone  
13 communications identified in Georgia Power's response to  
14 the Notice of Violation or any additional phone  
15 communications?

16 MR. REYES: My recollection is that subsequent  
17 to the unit start up, there were communications, verbal  
18 communications via the phone, between Georgia Power  
19 Company and the NRC.

20 And I don't recall how many or who. But based  
21 on those communications, the NRC revisited the decision to  
22 restart the unit.

23 And I was a party to that decision, so I was  
24 specifically asked, with others, whether that new  
25 information changed our decision.

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1 MR. MICHAEL KOHN: Was that revising of the  
2 decision at the point in time when you were aware of Mr.  
3 Mosbaugh's allegations?

4 MR. REYES: No, that was before July. Mr.  
5 Mosbaugh's allegations were received, if I recall right,  
6 in the July time frame.

7 MR. MICHAEL KOHN: Okay, but --

8 MR. REYES: Our knowledge of --

9 MR. MICHAEL KOHN: Mr. Mosbaugh's allegations  
10 were received in June.

11 MR. REYES: Okay, June.

12 MS. YOUNG: Objection, you're  
13 mischaracterizing the record. I think his allegations  
14 were submitted in two parts, June and July.

15 MR. MICHAEL KOHN: Okay, correct.

16 MR. REYES: Yes, the ones I was referring into  
17 July were the ones that particular were reviewed by the  
18 team that reported to me.

19 BOARD EXAMINATION

20 CHAIRMAN BLOCH: Well Mr. Reyes, were you  
21 referring to when the allegations were received or when  
22 you learned of them?

23 MR. REYES: When the allegations got received  
24 in NRC, I quickly learned of them. In a decision I have  
25 there, I'm one of the first managers, because of my

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1 opposition at that time, to learn about the receipt of the  
2 allegations.

3 CROSS EXAMINATION

4 MR. MICHAEL KOHN: And when is the first time  
5 -- I guess I'm just trying to pin down this conversation,  
6 this date. Was there a memo that you wrote about it or  
7 did you receive --

8 MR. REYES: Which conversation?

9 MR. MICHAEL KOHN: The conversation from  
10 Georgia Power concerning errors in the start court.

11 MR. REYES: I don't recall which of the phone  
12 calls came first. But the first --

13 MR. MICHAEL KOHN: Well my question is, do you  
14 have first-hand knowledge of these phone calls?

15 MR. REYES: From the point of view that -- two  
16 phone calls. One was to my direct staff, Mr. Brockman at  
17 that time. He received a phone call. And another phone  
18 call to Mr. Ebnetter, who was my direct supervisor at the  
19 time.

20 And I don't know which one came first, but I  
21 quickly learned when the NRC was learning about the  
22 discrepancies on the April ninth vu-graph, I quickly  
23 learned of them because of my position at that time.

24 MR. MICHAEL KOHN: I'm confused. You -- there  
25 is something about these phone calls that indicated that

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1 the vu-graph was in error?

2 MR. REYES: My recollection is that the NRC  
3 was notified that the numbers provided to the NRC on the  
4 April ninth were not -- the number of starts was not  
5 accurate.

6 MR. MICHAEL KOHN: That the -- well, let's see  
7 if I understand. The April ninth indicated there were 18  
8 and 19 starts. Do you agree with that?

9 MR. REYES: I think that's the number in the  
10 vu-graph.

11 MR. MICHAEL KOHN: Okay. And subsequent to  
12 that, there was an April ninth letter. And did that  
13 repeat the same number of starts?

14 MR. REYES: I think it did. I don't have it  
15 in front of me.

16 MR. MICHAEL KOHN: Now there is then an April  
17 19th LER. And to your knowledge, did that repeat the same  
18 number of starts?

19 MR. REYES: I don't have it in front of me.

20 ADMINISTRATIVE JUDGE MURPHY: He might want to  
21 see the documents.

22 MR. REYES: Yes.

23 CHAIRMAN BLOCH: Mr. Kohn, where is this --  
24 where is this going?

25 MR. REYES: I mean, whatever the number is

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1 there, so if the document is around, we can check it.

2 CHAIRMAN BLOCH: We'd have to start giving him  
3 documents, but I'm not sure what the purpose of reviewing  
4 each of the documents is with him.

5 MR. MICHAEL KOHN: Okay. Let me rephrase it  
6 to see if I can avoid that. Is -- would you believe that  
7 Mr. Brockman and Mr. Ebnetter would have more precise  
8 knowledge on these communications than you?

9 MR. REYES: Yes. One was done on the April  
10 ninth meeting. Two, I did not receive a direct  
11 communication directly.

12 But since I was one of the decision makers on  
13 the restarting of the unit, once the facts came forward  
14 that the number of starts presented on April ninth was not  
15 correct, we revisited the restart of the unit decision.  
16 And I was in that discussion.

17 And that's what I was referring to.

18 CROSS EXAMINATION

19 MR. MICHAEL KOHN: Who else participated in  
20 that discussion?

21 MR. REYES: I don't recall all the names  
22 involved. But if -- I will venture to say all the people  
23 that signed the restart letter would have been questioned  
24 as a minimum.

25 My guess is that those managers were probably

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1 also questioned some other staff that provided -- provided  
2 the detailed observations.

3 MR. MICHAEL KOHN: Okay. And is there a  
4 memorialization of this meeting?

5 MR. REYES: I don't know.

6 MR. MICHAEL KOHN: Does NRC Staff Counsel know  
7 if there is a memorialization of this meeting?

8 MS. YOUNG: I'm sorry, I didn't hear the  
9 question.

10 MR. MICHAEL KOHN: A memorialization of the  
11 second meeting concerning restart?

12 MS. YOUNG: I don't know of anything. You  
13 would have to ask the witness.

14 BOARD EXAMINATION

15 CHAIRMAN BLOCH: I'm not sure that you  
16 established that there was a meeting. Was there an actual  
17 meeting?

18 MR. REYES: I don't know. What I -- I  
19 remember being confronted with the question, and I  
20 remember we had to revisit the decision by all the  
21 parties.

22 I don't think they were all in one room  
23 because their physical location, your graphic, physical  
24 location is different. So I don't recall having all --  
25 everybody in the room.

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1 I recall the dialogue and revisiting the  
2 decision.

3 CHAIRMAN BLOCH: So you think this was an  
4 actual reconsideration of whether to do something  
5 different about the earlier decision on restart?

6 MR. REYES: No question in my mind. I was  
7 specifically asked. And then I was -- the reason I  
8 earlier used the number eight when I was talking about  
9 starts, we were trying to discuss well, do we have enough  
10 information, do we have enough number of starts to confirm  
11 that the equipment issues have been resolved?

12 And we had a lot of discussions. And  
13 obviously, one would have not been sufficient. We needed  
14 some confirmation that the equipment had been repaired.

15 And I remember discussing that we -- we had  
16 about eight or thereabouts. We were comfortable with,  
17 there was no question with, and that was sufficient for us  
18 to not change the previous decision.

19 CROSS EXAMINATION

20 MR. MICHAEL KOHN: That's in the subsequent  
21 restart decision that you're talking about?

22 MR. REYES: That's in the revisiting --

23 MR. MICHAEL KOHN: Yes, that's what I meant.

24 MR. REYES: We never --

25 MR. MICHAEL KOHN: The -- you talked about.

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1 MR. REYES: When we revisited our decision  
2 based on new information that the number of starts  
3 presented on April ninth was not accurate, we revisited  
4 the decision and were trying to make sure we would not  
5 have a different decision based with this information.

6 And we talked extensively about the number of  
7 starts, how many do we have confidence in, did we -- did  
8 we feel we had to shut down the unit or do we stay with  
9 the original decision?

10 BOARD EXAMINATION

11 CHAIRMAN BLOCH: Mr. Reyes, are you sure that  
12 this wasn't just questioning from the investigators who  
13 needed to know that in order to know the significance of  
14 the allegations?

15 MR. REYES: Oh no, this stays in my mind. I  
16 mean, this is a very important decisions when we let a  
17 unit restart after an event like this. And I remember  
18 clearly not being on the April ninth meeting. I had a  
19 conflict. I forgot why, but I had to be out of the office  
20 and I couldn't. I remember that.

21 I remember being briefed after the meeting on  
22 what occurred in the meeting, and I recall concurring on  
23 the April 12th letter, I believe that's right, allowing  
24 the unit to restart.

25 This is a very important decision in my mind.

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1 I still remember it.

2 CHAIRMAN BLOCH: The April 12th meeting, is  
3 that the one you're calling the revisitation?

4 MR. REYES: No, after the April ninth, the  
5 unit did not start right away. I forgot all the details  
6 for it. It was two or three days after that meeting where  
7 we granted the official release to start up the unit.

8 CHAIRMAN BLOCH: That was on the 12th, so that  
9 was the -- that was the initial decision to permit  
10 restart.

11 MR. REYES: Correct, correct. And I remember  
12 that decision, and then I remember the subsequent  
13 revisiting that decision when the information came forward  
14 that the count was not accurate.

15 MR. MICHAEL KOHN: Your Honor, Intervenor is  
16 not aware of any documentation concerning this second  
17 revisiting. And it seems that such an important decision  
18 or activity of the agency would be noted in some  
19 documentation somewhere.

20 And so I'm asking whether Staff has overlooked  
21 this in their document production, or whether they know of  
22 any typed documents related to this.

23 BOARD EXAMINATION

24 CHAIRMAN BLOCH: Well, let me ask Mr. Reyes,  
25 do you know whether or not Georgia Power submitted any new

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1 documentation for that meeting?

2 MR. REYES: The meeting -- the revisiting of  
3 the decision was only an internal NRC discussion, okay?

4 CHAIRMAN BLOCH: Okay.

5 MR. REYES: We learned that the Georgia Power  
6 information on April ninth on the number of starts was not  
7 accurate. And the revisiting of that decision was  
8 internal to us, the NRC, saying would you change your  
9 decision based on that and is there any action we have to  
10 take?

11 CHAIRMAN BLOCH: Do you recall whether there  
12 was an options paper prepared for the meeting?

13 MR. REYES: I don't -- I don't -- I don't  
14 recall. I don't recall.

15 CHAIRMAN BLOCH: Mr. Kohn, I understand your  
16 frustration, but I'm not sure what we can do. I'm sure  
17 that if the Staff does discover a documentation of this  
18 meeting, that they would voluntarily disclose it.

19 MR. MICHAEL KOHN: Okay, and that they will  
20 endeavor to find this? Thank you.

21 You also indicated that the problem associated  
22 with the number of starts being submitted didn't bother  
23 you, if I might use that term -- it's probably -- I don't  
24 think I'm accurately saying it as you said, but you get  
25 the thrust of what I'm saying -- that the number of starts

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1 issue wasn't overly troublesome because you were aware  
2 that the problem associated with there Calcon sensors had  
3 been resolved. Is that true?

4 MR. REYES: Yes, and I captured my discussion  
5 on the -- I think the lower number I used was eight. And  
6 the reason I stick with that number is because that's my  
7 recollection of our discussions of how many starts,  
8 confirmatory starts, will make you comfortable, or a  
9 question to that effect.

10 And we discussed the ones that the Staff had  
11 observed and the ones that there was no question about.  
12 And so in number, we had a number of confirmatory  
13 activities that resolved our issues at that time. So,  
14 that's the main answer to your question.

15 CROSS EXAMINATION

16 MR. MICHAEL KOHN: Were these -- these eight  
17 starts, were they successful starts? Were they valid  
18 successful starts? Were they consecutive starts?

19 MR. REYES: You just pointed to the problem of  
20 the language versus what we were trying to --

21 MR. MICHAEL KOHN: Well, I'm just referring to  
22 the eight starts you're discussing.

23 MR. REYES: I'm trying to answer it. I'm  
24 trying to answer it. What we were looking for, and I can  
25 speak for myself, was some confirmation that the -- what

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1 caused the failures on March 20th were resolved, even in  
2 the circumstance that you couldn't specifically get the  
3 root cause at a very low level of detail.

4           So we're looking for what is it that we need  
5 to confirm? And what we needed to confirm was that the  
6 diesel will start and remain running. It had nothing to  
7 do with the subsequent actions of the diesel.

8           There is no question that the diesel  
9 generators have many functions. They will start. They  
10 will close a breaker to the bus; it will sequence loads,  
11 many, many things.

12           And what we were looking for was a  
13 confirmatory only on the face of multiple activities that  
14 an emergency diesel generator has to do, where there was a  
15 question based on the performance of March 20th.

16           So what we were looking for was a start of the  
17 machine, of the engine, and the engine remaining in  
18 operation. Now that is not colored by any wording that I  
19 know because it is unique to the circumstance of what  
20 we're looking for.

21           And I can't answer your question other than we  
22 were looking for starts that the engine would come on on  
23 demand, and remain on speed and operation.

24           Now that doesn't fit any definition that I  
25 know in the technical literature. But it was an

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1 engineering assessment that we needed to make that the  
2 problems of March 20th were resolved.

3 BOARD EXAMINATION

4 CHAIRMAN BLOCH: Mr. Reyes, do you know how  
5 the data was collected for that reconsideration, review?

6 MR. REYES: I know we polled the staff in  
7 terms of trying to get from them how many they observed  
8 and were they satisfied.

9 Since we had eyes and ears on the side while  
10 some of these activities were going on, but I don't recall  
11 that we created a paper to count them or anything like  
12 that.

13 CHAIRMAN BLOCH: So the eight -- the number of  
14 eight that you came up with was a result of polling the  
15 staff and they gave their opinions?

16 MR. REYES: I know it was mine. I know it was  
17 in my mind. I can't recall if somebody said, "Oh, I  
18 observe five." I know in my mind -- this is five years  
19 ago. I know in my mind that we did talk at one time about  
20 eight starts.

21 And that in my mind sticks because I was  
22 satisfied with that, for not changing my previous  
23 decision, for not changing my endorsement of the start up.  
24 I felt I had enough --

25 CHAIRMAN BLOCH: You think the data that you

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1 got for the eight starts came from staff recollections and  
2 not from any new list?

3 MR. REYES: Correct. We did them -- at this  
4 point in time -- remember, the time, this was a revisiting  
5 of a decision that was done on April 12th. And shortly  
6 after that, we were revisiting that decision with -- with  
7 the information that we had that the number percent on  
8 April ninth was not accurate.

9 So we polled the staff trying to understand  
10 how many we had. We had no reservations with it,  
11 regardless of what was in the vu-graph, that we could  
12 observe or were satisfied with.

13 And I know we had enough that I was satisfied.  
14 And the number that sticks in my mind is eight, but I  
15 couldn't produce a paper, let's say.

16 CROSS EXAMINATION

17 MR. MICHAEL KOHN: Now this is happening in  
18 the subsequent meeting, and I assume then there would have  
19 been a lot -- there would have been additional starts of  
20 the diesel generator as of the time of April ninth.

21 Do you know if these, the starts that were  
22 discussed, people were looking at, well, we had eight  
23 valid starts or was there --

24 MR. BLAKE: Objection, asked and answered.

25 MR. REYES: It's the same answer I gave

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1 earlier. We were looking for a confirmatory start of the  
2 engine as --

3 CHAIRMAN BLOCH: You don't have to answer it  
4 again. You had answered it before.

5 MR. MICHAEL KOHN: Well, I guess I didn't  
6 understand the answer, Your Honor. I'm asking --

7 CHAIRMAN BLOCH: He said they were looking for  
8 starts where it ran for a while.

9 MR. REYES: Yes.

10 CROSS EXAMINATION

11 MR. MICHAEL KOHN: Was there an amount of time  
12 that the diesel was to run?

13 MR. REYES: Not in my mind, from the point of  
14 view that I knew that the surveillance required by tax  
15 payers do have very specific, lengthy, complicated  
16 surveillance that require time, electrical loading,  
17 sequencing. That's not what I was looking for.

18 I was trying to find out on March 20th, the  
19 engines started. And as I recall, in less than two  
20 minutes, it was a very short amount of time, seconds,  
21 where a malfunction occurred.

22 So that was what I was looking for in terms of  
23 confirmatory evidence that the equipment problem was  
24 resolved.

25 BOARD EXAMINATION

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1 CHAIRMAN BLOCH: There's a length of time that  
2 was long enough so that you would know whether the  
3 protective devices would have kicked in?

4 MR. REYES: Correct, j correct. I was trying  
5 to go, just to satisfy myself from a -- point of view,  
6 that what caused the failures on March 20th were resolved  
7 by confirmatory testing.

8 CROSS EXAMINATION

9 MR. MICHAEL KOHN: Are you aware of subsequent  
10 failures of the diesel generator occurring after the site  
11 area emergency that, on the face of it, appeared to  
12 duplicate the types of problems associated with the  
13 failure which resulted in the site area emergency?

14 MR. REYES: And in what time are you asking?  
15 In what time --

16 MR. MICHAEL KOHN: In the May 1990 time frame.

17 MR. REYES: I don't recall all of what I knew  
18 in May of 1990. But I have to say that this is a very  
19 important issue to me and my staff. So if there were  
20 failures, I would have promptly been informed of them.

21 Are you talking about after the unit started  
22 up?

23 MR. MICHAEL KOHN: Yes, after the -- the unit  
24 started up in April. And in May of 1990, are you aware of  
25 whether or not the diesel generators at Plant Vogtle

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1 experienced any failures that appeared from the  
2 observations of Georgia Power personnel to --

3 CHAIRMAN BLOCH: He answered it already. I  
4 don't know why you're repeating it.

5 MR. REYES: Yes. I don't recall. I must  
6 have, but I don't recall.

7 CHAIRMAN BLOCH: Do you want to show him the  
8 demonstrative aid?

9 MR. REYES: Yes, if there is a document that  
10 the agency got informed, then the answer is yes, I knew.  
11 I don't recall.

12 CHAIRMAN BLOCH: No, there's no -- no document  
13 that the agency was informed, but we do have an agreed  
14 exhibit on what starts occurred through this time period.

15 MR. REYES: Okay. If my staff was informed,  
16 then I should have known. But I just don't recall. It's  
17 over five years, and I just don't recall.

18 MR. MICHAEL KOHN: I'm not sure if that  
19 document you're referring to has that information on it,  
20 Your Honor.

21 CHAIRMAN BLOCH: Why would we spend time even  
22 going through the document. The man has said that if he  
23 was -- if this agency was aware, he was aware. He doesn't  
24 remember now. Where --

25 CROSS EXAMINATION

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1 MR. MICHAEL KOHN: Okay. So you have no  
2 knowledge today of any trip in the diesel generator in May  
3 of 1990, do you?

4 MR. REYES: I don't recall.

5 BOARD EXAMINATION

6 CHAIRMAN BLOCH: I take it you also don't  
7 recall in revising of the restart decision, there was any  
8 discussion of failures of the diesel?

9 MR. REYES: I don't recall that detail.

10 CROSS EXAMINATION

11 MR. MICHAEL KOHN: If -- at the time you were  
12 making the restart decision, if NRC knew that another  
13 failure of the diesel had occurred which could not be  
14 explained --

15 CHAIRMAN BLOCH: Hold on just a second.

16 (Pause)

17 CHAIRMAN BLOCH: Let's continue.

18 CROSS EXAMINATION

19 MR. MICHAEL KOHN: At the time you were making  
20 the restart decision, if you were aware that a subsequent  
21 failure of the diesel generator had occurred that could  
22 not be explained, would -- and that failure appeared to  
23 duplicate the failure that resulted in the site area  
24 emergency, would you have had pause on the restart, the  
25 second restart reconsideration?

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1 MS. YOUNG: Object. The question is  
2 irrelevant. He said a subsequent failure at the time you  
3 were making a restart decision?

4 BOARD EXAMINATION

5 CHAIRMAN BLOCH: If I understand correctly,  
6 the timing of the revisiting was within seven to ten days?

7 MR. REYES: Yes, it was days. Yes.

8 MS. YOUNG: But the question's premise was  
9 that at the time you were making the restart decision.

10 CHAIRMAN BLOCH: Oh, I thought it was the  
11 revisiting, wasn't it?

12 MR. MICHAEL KOHN: Yes.

13 MS. YOUNG: No, he said the restart decision.

14 MR. MICHAEL KOHN: No, revisiting I said.

15 MS. YOUNG: Could you -- maybe you need to  
16 restate the question because you're changing it.

17 CHAIRMAN BLOCH: But wait a second, even  
18 changing it to the revisiting, you're still before the May  
19 failure.

20 MR. MICHAEL KOHN: Well, Your Honor, that's  
21 only if the witness's recollection of the date is  
22 accurate, and I can't tell based on his testimony whether  
23 he can define what date that occurred. And that is a --

24 MS. YOUNG: Do we have record evidence that  
25 there was a May failure?

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1 MR. MICHAEL KOHN: Yes.

2 MS. YOUNG: With a trip?

3 MR. MICHAEL KOHN: Yes. Don't you remember  
4 INC, snooping?

5 MS. YOUNG: Can you point to an exhibit?

6 BOARD EXAMINATION

7 CHAIRMAN BLOCH: Judge Murphy reminds me that  
8 the time that the witness said the revisiting occurred was  
9 three to seven days, not seven to 10 days. Mr. Reyes, are  
10 you confident that the revisiting decision could not have  
11 taken place in May of 1990?

12 WITNESS REYES: That's not my recollection,  
13 but usually we're confident. So at my age, five years  
14 ago, it's like my eyesight. See I need to use assistance  
15 now.

16 CHAIRMAN BLOCH: We're going to permit this  
17 question just because it could happen that we'll wind up  
18 with documentation that shows it was in May. That's the  
19 only reason for allowing it.

20 Can we go forward and look at that further at  
21 a break?

22 MR. MICHAEL KOHN: Yes, Your Honor.

23 CROSS EXAMINATION

24 MR. MICHAEL KOHN: Is there anything you  
25 wanted to say? You were conferring with your other

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1 witness.

2 Are you aware of -- let me rephrase it. If  
3 you were aware of a subsequent failure of the diesel  
4 generator after the site area emergency and after you had  
5 made the original restart decision, which on its face  
6 could not be explained and could be --

7 CHAIRMAN BLOCH: The witness answered that  
8 already. He said it would give him pause.

9 MR. MICHAEL KOHN: Mr. Reyes, you also  
10 indicated that the basis of your testimony is associated  
11 with NUREG 1410. Is that true?

12 WITNESS REYES: No. What I was trying to  
13 state was that on page seven, item three that we were  
14 discussing in the morning, the basis for that was a large  
15 number of communications are all written on a large number  
16 of issues. I provided as an example on the magnitude of  
17 those issues that had to be resolved, the 1410 document  
18 which has a list of all the issues identified by IID which  
19 my staff had to be satisfied before the plant could be  
20 allowed to re-start. So I was trying to encapsulate the  
21 basis for my statement, which was a large number of  
22 information and exchanges between NRC and GPC.

23 MR. MICHAEL KOHN: Did you review NUREG 1410?

24 WITNESS REYES: In 1990, yes.

25 MR. MICHAEL KOHN: Did you review it prior to

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1 testifying today?

2 WITNESS REYES: No.

3 MR. MICHAEL KOHN: Do you know if NRC was  
4 aware -- let me rephrase it. If a subsequent failure of a  
5 diesel generator occurred in May of 1990 that on its face  
6 could be --

7 CHAIRMAN BLOCH: Are you sure you aren't  
8 stuck?

9 MR. MICHAEL KOHN: No.

10 CHAIRMAN BLOCH: You are asking the same  
11 question again.

12 MR. MICHAEL KOHN: No. I'm asking it  
13 differently.

14 CHAIRMAN BLOCH: Well, we'll see.

15 MR. MICHAEL KOHN: If a trip of the diesel  
16 generator occurred following the site area emergency, but  
17 before the NUREG was issued, would you expect NRC to  
18 advise the NRC so that information could be included in  
19 the NUREG?

20 CHAIRMAN BLOCH: Mr. Kohn, I think you  
21 misspoke. You said something about the NRC advising the  
22 NRC.

23 MR. MICHAEL KOHN: Georgia Power could advise  
24 the NRC.

25 WITNESS REYES: I'm not sure I understand the

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1 question, but --

2 MS. YOUNG: Do you know the date of the NUREG  
3 1410?

4 MR. MICHAEL KOHN: June 1990

5 MS. YOUNG: Okay. The alleged trip occurred  
6 May 23, 1990?

7 WITNESS REYES: The 23rd or 24th, 1990. Yes.

8 MR. BLAKE: Is there some evidence that we  
9 knew whenever the publication date was going to be of  
10 NUREG 1410?

11 MR. MICHAEL KOHN: I think actually there is  
12 on the record.

13 MR. BLAKE: Okay. Why don't you give me a  
14 site.

15 WITNESS REYES: Other than requirements of  
16 reporting requirements of the NRC, I don't know how to  
17 answer the question. The licensee is required to comply  
18 with the reporting requirements. If it met the reporting  
19 requirements, they had to report it to the NRC.

20 MR. MICHAEL KOHN: You also indicated that the  
21 NRC had some difficulty in paperwork, trying to determine  
22 the number and sequence of starts following the site area  
23 emergency. Is that correct?

24 WITNESS REYES: What I thought I said was that  
25 we knew that there was a lot of notes taken by the system

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1 engineer and by us on the troubleshooting activities.  
2 Getting to do the counting was not going to be easy. It  
3 came up in the revisiting. In the revisiting of the  
4 counts, when we were trying to say okay, so how many do we  
5 have that we the NRC are comfortable with in revisiting  
6 this decision. In that dialogue, I remember that the  
7 issue surfaced in terms of documentation readily available  
8 there for that revisiting.

9 MR. MICHAEL KOHN: In your mind, did Georgia  
10 Power have a responsibility to have sufficient paperwork  
11 in order prior to re-start to document that the diesel  
12 generator was reliable?

13 WITNESS REYES: Yes.

14 CHAIRMAN BLOCH: Mr. Kohn, are you focusing on  
15 your cross examination plan now?

16 MR. MICHAEL KOHN: I'm about to return to the  
17 cross examination plan.

18 CHAIRMAN BLOCH: We're about to take a break.  
19 I have one area that I'd like to ask a few questions in.  
20 This is to the panel, because I don't know who has the  
21 most information about it.

22 BOARD EXAMINATION

23 CHAIRMAN BLOCH: I'd like to know when the  
24 Wyle Report was completed on the Calcon sensor, whether  
25 the findings represented anything of new information to

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1 the NRC. Was that new information when that report was  
2 issued?

3 WITNESS REYES: I don't recall.

4 CHAIRMAN BLOCH: Mr. Zimmerman, were you  
5 around?

6 WITNESS ZIMMERMAN: I don't have background on  
7 that issue.

8 CHAIRMAN BLOCH: Mr. Reyes, are you familiar  
9 with the fact that the Wyle Report found that there were  
10 threads or spawlings and some other contaminants found  
11 inside the calcon sensors?

12 WITNESS REYES: Yes.

13 CHAIRMAN BLOCH: Do you know whether or not  
14 the follow-through on that finding by licensee was  
15 adequate?

16 WITNESS REYES: I know the staff looked at it,  
17 but I don't recall.

18 CHAIRMAN BLOCH: The one area I am most  
19 concerned about is whether it indicated a failure of  
20 workmanship in the installation of the calcon sensors. Do  
21 you know whether there was an inquiry made into whether  
22 there was a failure of workmanship in installing the  
23 sensors back on the diesels?

24 WITNESS REYES: I know we pursued the issue,  
25 but I don't remember the details of the workmanship issue.

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1 CHAIRMAN BLOCH: When you say you know you  
2 pursued the issue, I know you pursued some of it because  
3 there were changes made in the engineering of the  
4 attachment to the diesel. But I am not sure whether  
5 anyone pursued the personnel questions involved.

6 WITNESS REYES: That's correct. That's what I  
7 was saying. I know we knew about the findings in the Wyle  
8 Report, one lab report. I know we did some on-site  
9 activities. I don't know if we pursued the workmanship  
10 issue in any other issue.

11 CHAIRMAN BLOCH: Mr. Zimmerman, you weren't  
12 around at that time. Is that --

13 WITNESS ZIMMERMAN: That's correct.

14 CHAIRMAN BLOCH: Let's take a 10 minute  
15 recess.

16 (Whereupon, from 11:02 a.m. until 11:15 a.m.  
17 the proceedings went off the record.)

18 CHAIRMAN BLOCH: The hearing will come to  
19 order.

20 CROSS EXAMINATION

21 MR. MICHAEL KOHN: Mr. Reyes, are you aware of  
22 any agency report indicating that Georgia Power manifested  
23 a closed accepted adversarial attitude towards NRC in the  
24 1990 time frame?

25 WITNESS REYES: I don't recall a document that

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1 has that.

2 MR. MICHAEL KOHN: Mr. Zimmerman, same  
3 question.

4 WITNESS ZIMMERMAN: I don't recall any off  
5 hand, but I would need to see some of the various exhibits  
6 that have been discussed to be able to speak with  
7 confidence that none of the discussions of that nature  
8 were in that time frame.

9 MR. MICHAEL KOHN: On page four of your pre-  
10 filed testimony, you list documents that you reviewed.  
11 Have you actually read, let's start with the first one I  
12 see, seems to be the NOV and the modified NOV. Have you  
13 reviewed those documents completely?

14 WITNESS REYES: Yes. My recollection is yes.

15 MR. MICHAEL KOHN: The second one is the  
16 office of investigation report. Did you review that  
17 document completely?

18 WITNESS REYES: Excluding the actual  
19 transcripts of the interviews. I did not read the large  
20 number of transcripts.

21 WITNESS ZIMMERMAN: Same answer.

22 MR. MICHAEL KOHN: And do you have any  
23 recollection to date whether a conclusion reached by the  
24 Office of Investigation was that in the 1990 time frame  
25 Georgia Power exhibited a closed adversarial relationship

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1 with NRC?

2 WITNESS REYES: I don't have the document in  
3 front of me, but I would have to read it again.

4 MR. MICHAEL KOHN: My question is, when you  
5 were preparing your testimony, were you aware of any NRC  
6 finding concerning the observation of NRC investigator  
7 that Georgia Power exhibited a closed adversarial  
8 relationship with the NRC in the 1990 time frame?

9 MR. BLAKE: I have an objection. This doesn't  
10 need to be a memory test. You have asked them whether or  
11 not they read the OR report. The answer was yes. If that  
12 conclusion appears in there, let him put it in front of  
13 him. Did you pay attention to this, do you remember  
14 seeing this.

15 Let's get on with something which is  
16 probative. Let's assume his answer is yes or no. It  
17 doesn't make any difference.

18 MR. MICHAEL KOHN: I think it does make a  
19 difference as what was in the witnesses' mind at the time  
20 they were preparing their testimony.

21 CHAIRMAN BLOCH: I'm going to allow this one  
22 question. We don't want to get repetitious on it.

23 WITNESS REYES: I read the OI report. I am  
24 fully aware of what's in it. I can't quote you the words.

25 MR. MICHAEL KOHN: My question is, at the time

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1 you were preparing the testimony that you submitted in  
2 1995, was it in your recollection that the agency or an  
3 agency report indicated that Georgia Power had a closed  
4 adversarial relationship with NRC in the 1990 time frame?

5 CHAIRMAN BLOCH: That's now asked and  
6 answered. The question is to what extent did the OI  
7 report influence your conclusions.

8 WITNESS REYES: I was aware of it. I took it  
9 into account when I arrived at my conclusions.

10 CHAIRMAN BLOCH: In what way did you take it  
11 into account?

12 WITNESS REYES: I was aware of it. I  
13 concurred on the enforcement that came from that  
14 conclusion. I was aware of the OI conclusion.

15 MS. YOUNG: Mr. Kohn, I think the witness just  
16 misspoke. I am not aware of any enforcement action being  
17 taken based on that conclusion. I don't think he's  
18 accurately characterized the record.

19 MR. MICHAEL KOHN: My question then is, your  
20 basis of your review of the OI report, was it limited to  
21 looking at the portions relevant to the Notice of  
22 Violation?

23 WITNESS REYES: I read the OI report. It's  
24 entirely with the exception of the transcripts.

25 MR. MICHAEL KOHN: I am going to call your

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1 attention to Intervenor's Exhibit 39. Is this the  
2 document you reviewed?

3 WITNESS REYES: Yes.

4 CHAIRMAN BLOCH: I think the record has to  
5 show what it is that the witness is looking at. Exhibit  
6 39, Intervenor Exhibit 39. II-39.

7 WITNESS REYES: Yes. This is the document I  
8 reviewed.

9 MR. MICHAEL KOHN: If you would look at page  
10 102 of this exhibit, the conclusion on the bottom of that  
11 page, you will see that -- do you recall reading this  
12 conclusion before?

13 WITNESS REYES: Yes.

14 MR. MICHAEL KOHN: This conclusion states that  
15 it is also concluded from the combination of the above  
16 findings and the overall review by OI NRC of the numerous  
17 audio tape recordings of internal GPC conversations  
18 regarding their communications with the NRC on a range of  
19 issues, that at least in the March, August 1990 time  
20 frame, there was evidence of a closed, deceptive,  
21 adversarial attitude towards NRC on the part of GPC senior  
22 management. Do you see that?

23 WITNESS REYES: Yes.

24 MR. MICHAEL KOHN: It's my understanding that  
25 you did not review any of those taped transcripts. Is

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1 that correct? Other than a portion of tape 57?

2 WITNESS REYES: I stated in my deposition.

3 MR. MICHAEL KOHN: Is that also true with you,

4 Mr. Zimmerman?

5 WITNESS ZIMMERMAN: Yes.

6 MR. MICHAEL KOHN: And you did not review the

7 exhibits to the OI report also. Is that also correct?

8 WITNESS REYES: I did not.

9 WITNESS ZIMMERMAN: I did not.

10 MR. MICHAEL KOHN: Beyond the inaccuracies or

11 incomplete information associated with Georgia Power's

12 correspondence addressed in the modified notice of

13 violation, are you aware of any other instances in 1990

14 when incomplete or inaccurate information was provided to

15 the NRC by Georgia Power or SONOPCO project personnel?

16 WITNESS REYES: State that question again.

17 MR. MICHAEL KOHN: Beyond the inaccurate of

18 incomplete information associated with the GPC

19 correspondences addressed in the modified notice of

20 violation, are you aware of any other instances in 1990

21 when incomplete or inaccurate information was provided to

22 the NRC by Georgia Power or SONOPCO project personnel?

23 WITNESS REYES: There was an issue in August

24 of 1990 where the operational safety inspection team

25 received verbal information from GPC that was

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1 questionable. The agency reviewed that. Held an  
2 enforcement conference, and concluded that there were no  
3 issues with that. But that's the only item that I recall  
4 even that's close to what you are asking about.

5 MR. MICHAEL KOHN: Do you know what the  
6 specific factual -- do you know what Georgia Power  
7 communicated during the OSI which led investigators to  
8 question the accuracy of responses?

9 MR. BLAKE: I want to know whether this  
10 question is limited to related to diesel generators.

11 MR. MICHAEL KOHN: It relates to the 1990 time  
12 frame.

13 MR. BLAKE: That is not my question. I  
14 understood. I didn't ask anything about time. I want to  
15 know subject.

16 MR. MICHAEL KOHN: This is related to anything  
17 that occurred during the OSI.

18 MR. BLAKE: Is it related to diesel generators  
19 or not? Judge Bloch, we got into it yesterday.

20 MR. MICHAEL KOHN: I'll agree that that is  
21 what we got into yesterday. Yesterday I posed the  
22 question limiting it to diesel generators. Based on your  
23 objection, Ernie, we expanded it to anything during his  
24 observations of 1990.

25 CHAIRMAN BLOCH: You mean Mr. Blake was asking

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1 that we expand the scope? What's the subject matter that  
2 you are relating to?

3 MR. MICHAEL KOHN: I'm not really sure. I'm  
4 asking the witness's knowledge of what occurred on the  
5 OSI. What factual information does he have as to what the  
6 issues were which caused pause as to the accuracy of  
7 information being presented.

8 CHAIRMAN BLOCH: The Board's ruling on the  
9 issues were that you could pursue the diesel generator  
10 issues even beyond the time period. But we limited the  
11 case to the issues that are being tried. So you can not  
12 ask about anything.

13 MR. BLAKE: And is it your representation you  
14 don't know what you are talking about during the OSI that  
15 Mr. Reyes has just spoke to, and you don't know that it's  
16 beyond the diesel generator issues?

17 MR. MICHAEL KOHN: That's correct. To the  
18 best of my knowledge, every witness we have asked about it  
19 -- I deposed Mr. McDonald about it. He had no  
20 recollection. Every witness I have deposed about this has  
21 had no recollection.

22 CHAIRMAN BLOCH: If you don't know, and it  
23 might be diesels, we should. Do you know what this issue  
24 was that caused the concern and conference?

25 WITNESS REYES: Yes. It is not diesels. In

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1 order for me to recite the issues, we'll have to get the  
2 document. It's in the PDR's documented inspection report.

3 CHAIRMAN BLOCH: But you know it's a different  
4 area of the plant?

5 WITNESS REYES: I know because I was there  
6 when it happened.

7 CHAIRMAN BLOCH: Okay.

8 MR. BLAKE: They talked about it with the last  
9 panel of witnesses.

10 MR. MICHAEL KOHN: And the last panel could  
11 not remember the issue.

12 CHAIRMAN BLOCH: Let's continue, since the  
13 witness does remember that it wasn't diesels. Hold on a  
14 second.

15 I wanted the examination to continue, but not  
16 on this subject.

17 MR. MICHAEL KOHN: Do you know if the issue  
18 concerned anything having to do with the functioning of  
19 the PRB?

20 CHAIRMAN BLOCH: Did I not hear myself  
21 properly?

22 MR. MICHAEL KOHN: You did, Your Honor. I was  
23 trying to probe the scope in which we would be allowed  
24 questioning on it.

25 WITNESS REYES: I would have to look at the

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1 document.

2 MR. MICHAEL KOHN: Let me pose a question.  
3 This is where we were yesterday and why I thought this was  
4 relevant. Based on limited to the diesel generator  
5 reporting issue and not considering any other facts, do  
6 you believe Georgia Power's activity with respect to the  
7 diesel generator reporting issue on the number of starts,  
8 starting from the time the site area emergency occurred  
9 until August 1990, including the April 9 presentation --

10 CHAIRMAN BLOCH: That was the question that we  
11 struck, because it involves less than the total  
12 performance of Georgia Power during the time period.

13 MR. MICHAEL KOHN: Exactly. Now what I am  
14 trying to probe with is here's another performance issue  
15 in 1990 which the witnesses' testimony unfortunately isn't  
16 in the record any more, but the witnesses' prior testimony  
17 was that based on his overall perception in that time  
18 period. So now for me to properly probe the overall  
19 perception of that time period, I need to know the other  
20 material, false statements they were aware of or suspected  
21 occurring in that time period. That is why I am raising  
22 the question with respect to what occurred during the OSI.

23 CHAIRMAN BLOCH: Hold on a second. Mr. Kohn,  
24 continue.

25 MS. YOUNG: Mr. Kohn, if you are going to ask

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1 Mr. Reyes more questions about the OSI inspection, could  
2 you at least refer to an exhibit?

3 MR. MICHAEL KOHN: First I guess maybe I  
4 should get an answer. The last time when I posed a  
5 question, as I was beginning to pose it, it was  
6 restructured to include his entire observation of 1990.  
7 May I ask the Board if I can first limit it to the diesel  
8 generator and then expand it from there?

9 BOARD EXAMINATION

10 CHAIRMAN BLOCH: Let me see if I can help. On  
11 page seven of your testimony --

12 WITNESS REYES: I have it in front of me.

13 CHAIRMAN BLOCH: You make a conclusion about  
14 GPC's overall performance in communicating with the NRC  
15 subsequent to the SAE. Could you tell us, in addition to  
16 the diesel starts issue, what other information you  
17 considered that you considered was adverse to the overall  
18 performance of GPC?

19 WITNESS REYES: It's an issue that I referred  
20 to earlier. During the OSI on field activities, there  
21 were some questions the staff asked of some of the GPC  
22 employees. The first answer received by the NRC staff,  
23 the first verbal answer received, was not completely  
24 accurate. It was resolved. All the issues were resolved  
25 as the inspection occurred. So we had all the information

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1 we needed as a result of the inspection. But that raised  
2 a question that we pursue and subsequently documented that  
3 we didn't have any more reservations in that area.

4 CHAIRMAN BLOCH: Were these the only two areas  
5 of adverse evidence?

6 WITNESS REYES: In terms of communication of  
7 information?

8 CHAIRMAN BLOCH: Yes.

9 WITNESS REYES: Yes.

10 MR. MICHAEL KOHN: Are you aware of any  
11 inaccurate or incomplete information provided by Georgia  
12 Power Company in its response to Intervenors 2.206  
13 petition which you believe to contain inaccurate or  
14 incomplete information?

15 WITNESS REYES: I don't know of any.

16 MR. MICHAEL KOHN: Are you aware of any  
17 incomplete or inaccurate information provided by Georgia  
18 Power or Southern Nuclear personnel in their 1994  
19 responses to the NOV or demand for information?

20 WITNESS REYES: I am not aware of any.

21 CHAIRMAN BLOCH: Mr. Kohn, I don't see that  
22 that's relevant to the testimony. Where are you looking  
23 at that? We are not trying any period subsequent to 1990.

24 MR. MICHAEL KOHN: It would be in the one  
25 parenthesis on the top of page seven. It says the

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1 corrective actions identified in GPC's response to the NOV  
2 and DFIs is the basis in which the witness made a  
3 determination about performance failures.

4 CHAIRMAN BLOCH: Thank you.

5 MR. MICHAEL KOHN: Are you aware of any  
6 contradictory statements or testimony made by Georgia  
7 Power witnesses during the course of this proceeding?

8 WITNESS REYES: No. I have not been present  
9 at the proceedings.

10 MR. MICHAEL KOHN: Are you aware of any  
11 contradictory statements made by Georgia Power witnesses  
12 to the Office of Investigations associated with the OI  
13 diesel generator false statements investigation?

14 WITNESS REYES: No.

15 MR. MICHAEL KOHN: Mr. Zimmerman, I could go  
16 through the same litany, or can I ask you a general  
17 question whether any of the documents and communications I  
18 covered with Mr. Reyes, whether you are aware of any  
19 additional false inaccurate, or incomplete information  
20 provided to NRC in those communications?

21 WITNESS ZIMMERMAN: There are none that I am  
22 aware of.

23 MR. MICHAEL KOHN: Your testimony would be the  
24 same as Mr. Reyes?

25 WITNESS ZIMMERMAN: That's correct.

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1 CHAIRMAN BLOCH: We don't know if we've  
2 adequately told the panel, but if at any time you disagree  
3 with an answer by another participant, we'd appreciate  
4 your speaking up.

5 MR. MICHAEL KOHN: Mr. Reyes, can you tell me  
6 if there was a discussion on the standard of review that  
7 the NRC staff would use when analyzing the response to the  
8 notice of violation?

9 WITNESS REYES: I don't recall.

10 MR. MICHAEL KOHN: Was there any determination  
11 on what burden of proof Georgia Power would have or what  
12 burden of proof NRC's Office of Investigation would have  
13 to demonstrate wrong-doing on the part of the licensee?

14 WITNESS REYES: I don't recall.

15 MR. MICHAEL KOHN: Do you know whether the  
16 determination of staff was made with respect to the notice  
17 of violation that the burden would be on NRC staff to  
18 determine that a violation occurred?

19 WITNESS REYES: I don't recall.

20 WITNESS ZIMMERMAN: Can I respond?

21 MR. MICHAEL KOHN: Yes, sir.

22 WITNESS ZIMMERMAN: I want to make sure I  
23 understand your question. But I would envision that the -  
24 - or it's my position that the burden is on the agency  
25 before we write the notice of violation. Does that get to

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1 your question?

2 MR. MICHAEL KOHN: Yes, sir. Thank you.

3 Your Honor, I think if I would be allowed a  
4 short recess, I could prune through my questioning and  
5 reduce the time to another 15 minutes.

6 CHAIRMAN BLOCH: Okay.

7 MR. MICHAEL KOHN: I request about 10 minutes,  
8 if that's all right, Your Honor.

9 CHAIRMAN BLOCH: We're going to be breaking at  
10 11:55, so please try to break it a little tighter.

11 (Whereupon, at 11:37 a.m. the proceedings  
12 recessed, to reconvene at 1:32 p.m. this same day.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 (1:32 p.m.)

3 CHAIRMAN BLOCH: Good afternoon. Pleased to  
4 announce that Mr. Kohn has had a long time to get on the  
5 ball here. So we're going to go through to a crescendo.

6 MR. MICHAEL KOHN: Thank you, Your Honor. Are  
7 we on the record?

8 CHAIRMAN BLOCH: Yes, we are. We should be.

9 MR. MICHAEL KOHN: And I'd like to apologize,  
10 but as everyone is aware, Mary Jane is not able to attend  
11 today, and no one else is able to assist. So I apologize.  
12 The record should reflect that Mr. Steven Kohn and Mr.  
13 Mosbaugh are also not present today. And I'd like to  
14 apologize for not having the support staff that I normally  
15 anticipate.

16 CROSS EXAMINATION (continued)

17 MR. MICHAEL KOHN: Mr. Reyes, I left off  
18 photocopying an exhibit previously marked by Intervenor as  
19 Exhibit 83, although I'm not sure if it was previously  
20 identified in the record, so let me do that at this time,  
21 Your Honor. The document referred to on the first page  
22 bears a marking Exhibit 83, page one of 17.

23 The page one of 17 is correct for the first  
24 page and the second page, but thereafter the page  
25 numbering is incorrect because this was the double sided

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1 Exhibit II-83 for identification.)

2 MR. MICHAEL KOHN: Thank you, Your Honor. Mr.  
3 Reyes, earlier you were discussing a concern regarding  
4 accuracy of information which came up during the OSI. Is  
5 the four examples listed on page three and four of the  
6 inspection report the examples to which you were  
7 referring?

8 WITNESS REYES: Yes, sir.

9 MR. MICHAEL KOHN: Are you aware of the --

10 MR. BLAKE: Is this the inaccurate information  
11 which you didn't know what it was which you've know gone  
12 and got this document?

13 MR. MICHAEL KOHN: This is the inaccurate  
14 information which I did not know what it was because I  
15 only saw the photocopied version of 83, which didn't have  
16 this page in it. So I apologize.

17 MR. BLAKE: Well, who produced it? Let's see  
18 what the problem that we didn't know what it was. That's  
19 my question.

20 MS. YOUNG: Staff counsel -- through Staff  
21 counsel's copy of Exhibit 83 received from Intervenor.

22 MR. BLAKE: I see. So you knew what it was  
23 that he was referring to and cured the problem?

24 MS. YOUNG: Yes, we located the document and  
25 we thought it would be better for the record to refer to

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1 what the document was, at least to have it marked.

2 MR. MICHAEL KOHN: Now did you know the  
3 resolution of all four of these inaccurate -- the all four  
4 issues identified in this inspection report prior to  
5 restart? Excuse me, let me withdraw that question. That  
6 makes no sense. These four statements were considered by  
7 you in your overall determination of the 1990 performance,  
8 is that correct?

9 WITNESS REYES: Yes.

10 MR. MICHAEL KOHN: Even though the inspection  
11 report was issued after that time frame in 1991?

12 WITNESS REYES: I was on site. I was the  
13 executive which this team reported to. I considered this  
14 and I was aware of this contemporaneous with 1990 August.

15 MR. MICHAEL KOHN: Okay. Now I'm going to ask  
16 you, are you aware of any other false statements -- I  
17 think I asked you, but I want to make sure -- that  
18 occurred during this OSI inspection?

19 WITNESS REYES: Not to my recollection.

20 MR. MICHAEL KOHN: I'm going to ask you to  
21 look at Intervenor's Exhibit 95, and I think the book  
22 should be opened up in front of you to that page. And I'm  
23 going to call your attention to the bottom -- I think it's  
24 the sixth page into the document, which has a project  
25 number 045534 on the bottom.

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1 WITNESS REYES: 045534?

2 MR. MICHAEL KOHN: Yes, sir. And this should  
3 be entitled Responses to NRC Questions Concerning Diesel  
4 Starts Reported on April 9, 1990 and of the LER of 90-06  
5 Revs. 0 and 1.

6 WITNESS REYES: Yeah, we're on that page.

7 MR. MICHAEL KOHN: Okay. Were you aware that  
8 these questions were submitted to Licensee for response by  
9 NRC?

10 MR. BLAKE: Do you have a copy of a document  
11 where these questions were submitted to the Licensee?

12 MR. MICHAEL KOHN: There's testimony to that  
13 effect.

14 MR. BLAKE: I don't think that's correct. I  
15 simply don't think that's correct. It's close, but it's  
16 not correct.

17 MR. MICHAEL KOHN: Let me rephrase the  
18 question. Were you aware that NRC submitted inquiries to  
19 Georgia Power which were responded to in writing with  
20 respect to questions one through five on --

21 MR. BLAKE: Can I try my hand?

22 MR. MICHAEL KOHN: Certainly, sir.

23 MR. BLAKE: What I believe happened was in the  
24 course of the inquiry from the OSI investigation, the  
25 company understood that these were the areas that the

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1 Staff would be interested in, formulated themselves in  
2 order to apply some discipline a list of questions, and  
3 then answered them themselves. And that's the format that  
4 I think we're looking at.

5 MR. MICHAEL KOHN: Okay. And were you aware  
6 that these answers were provided to NRC?

7 WITNESS REYES: I don't remember that we asked  
8 these questions. This is the subject matter of the OI  
9 investigation which is specifically excluded from the OSI  
10 activities.

11 MR. MICHAEL KOHN: So then the OI  
12 investigation was not considered in the 1990 time frame?  
13 When I say the OI investigation, the subject matter that  
14 was later within the scope of the OSI investigation was  
15 not considered in the 1990 time frame?

16 WITNESS REYES: You mean to base my statement  
17 on page seven, item three, of my testimony?

18 MR. MICHAEL KOHN: Yes, sir.

19 WITNESS REYES: Yeah, I considered it because  
20 I knew about it. I mean, I knew about the allegations --  
21 you have to realize, I was not -- in my position. Not  
22 only did the OSI team reported to me on site for all other  
23 issues, but Mr. Robinson was part of that team, and I was  
24 aware of all allegations received against Georgia Power  
25 Vogtle.

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1 So, I was aware of all the issues, including  
2 later on the subsequent conclusion of OI.

3 MR. MICHAEL KOHN: Well, let me know look at -

4 -

5 WITNESS REYES: I answered earlier that yes, I  
6 read the OI report; yes, I knew what it said in  
7 conclusion; and yes, I considered that.

8 MR. MICHAEL KOHN: But you did not consider it  
9 in the 1990 time frame? You couldn't have. It wasn't --

10 WITNESS REYES: Correct. I mean, I knew --

11 MR. MICHAEL KOHN: Okay.

12 MS. YOUNG: Mr. Kohn, I think Mr. Reyes just  
13 misspoke. My recollection is we have testimony in the  
14 record and possibly exhibits in the record which indicate  
15 that two GPC employees were asked questions about diesel  
16 generator reporting in August of 1990 during the OSI.

17 WITNESS REYES: Then I stand corrected.

18 MS. YOUNG: I think that's Cash and Bockhold.

19 WITNESS REYES: If the record says a -- there  
20 was a large thing doing a lot of interviews. If they did,  
21 they did.

22 MR. MICHAEL KOHN: Okay.

23 MS. YOUNG: And I think the record also shows  
24 that the amount of questioning of those individuals was  
25 small in comparison to other issues that were addressed by

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1 the inspection team.

2 MR. MICHAEL KOHN: My question, Mr. Reyes, is  
3 do you know right now whether the response to question one  
4 is complete and accurate to the best of Georgia Power's  
5 knowledge?

6 MS. YOUNG: I object to the question. How can  
7 he answer whether it's complete and accurate to the best  
8 of GPC's knowledge?

9 MR. MICHAEL KOHN: Do you have a reason to --  
10 let me rephrase the question. Do you know whether the  
11 response to question one is complete and accurate as of  
12 today?

13 WITNESS REYES: This statement here on the top  
14 of the page?

15 MR. MICHAEL KOHN: Yes. The question one,  
16 "Who prepared the slide for the 4/9/90 presentation?" And  
17 the answer, "Bockhold, Cash and Burr working as a group."

18 WITNESS REYES: To the best of my knowledge,  
19 yes.

20 MR. MICHAEL KOHN: Are you aware of whether  
21 Mr. Cash and Mr. Burr indicate that they were not working  
22 as a group?

23 WITNESS REYES: I'm not aware of that.

24 MR. MICHAEL KOHN: Okay. Now if you would  
25 look at the response to question number three, you'll see

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1 number -- question number three is broken into subparts  
2 one, two and three. One says, "Who prepared the LER?"  
3 And if you would look through that answer, you notice that  
4 Mr. Shipman and Mr. Hairston are not included in the  
5 answer.

6 MS. YOUNG: I think, Counsel, you just  
7 misspoke.

8 CHAIRMAN BLOCH: I think you did. I think you  
9 read the question wrong.

10 MR. MICHAEL KOHN: I'm sorry.

11 CHAIRMAN BLOCH: You said who prepared it, and  
12 it says who reviewed it.

13 MS. YOUNG: And Mr. Shipman's name is listed  
14 in the answer.

15 MR. MICHAEL KOHN: I'm sorry, I did misspeak.  
16 If you would look to the response to question number  
17 three, and if you look at the last two sentences, it says  
18 "The final revision of LER 90-06, revision zero, was  
19 prepared by a phone con. between site management and  
20 corporate management. Those participating are believed to  
21 be Mr. Bockhold, Mosbaugh, Aufdenkampe, and Shipman."

22 Do you see that?

23 WITNESS REYES: Yeah.

24 MR. MICHAEL KOHN: Are you aware that Mr.  
25 McCoy was a participant to that telephone conference call?

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1 WITNESS REYES: I think I was, yes.

2 MR. MICHAEL KOHN: And are you aware that Mr.  
3 Hairston participated in that conference call?

4 WITNESS REYES: I don't recall.

5 MR. MICHAEL KOHN: And based on your knowledge  
6 that Mr. McCoy was a participant, would you agree that the  
7 response to number three is incomplete?

8 WITNESS REYES: I guess his name is not  
9 listed, so it's not complete unless it includes his name.

10 MR. MICHAEL KOHN: And you were not aware of  
11 this omission in 1990, correct?

12 WITNESS REYES: To the best of my knowledge,  
13 this was not submitted to the NRC at that time.

14 WITNESS ZIMMERMAN: If I can add something.  
15 Just listening to the discussion and reading the sentence,  
16 it says "Those participating are believed to be," which to  
17 me doesn't mean that it's -- that Georgia Power is  
18 indicating that's 100% factual.

19 MR. MICHAEL KOHN: Well, do you think that the  
20 persons -- the collective group of persons who  
21 participated in that conference call collectively knew  
22 that Mr. McCoy was there?

23 WITNESS REYES: I don't know.

24 WITNESS ZIMMERMAN: I don't know either.

25 MR. MICHAEL KOHN: Do you know whether there's

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1 a tape transcript in which Mr. McCoy agrees that he was  
2 present and that that taped conversation occurred before  
3 this document was prepared?

4 MS. YOUNG: Object to the question. I think  
5 you said a tape transcript where Mr. McCoy agrees he was  
6 present. Did you really mean that question?

7 MR. MICHAEL KOHN: A tape. Mr. Mosbaugh  
8 recorded a taped conversation before this document was  
9 prepared in which Mr. McCoy agreed that he was present.  
10 You're not aware --

11 MS. YOUNG: I'm still objecting. Can you fix  
12 this question to --

13 WITNESS REYES: I didn't listen to all the  
14 tapes, so I don't know.

15 MR. MICHAEL KOHN: All right, I'll --

16 WITNESS ZIMMERMAN: I guess the point that I  
17 wanted to make is --

18 BOARD EXAMINATION

19 CHAIRMAN BLOCH: Are you aware that a tape  
20 transcript was prepared of this conversation in which Mr.  
21 McCoy was present?

22 WITNESS REYES: I don't recall those details.  
23 I didn't review every transcript.

24 CHAIRMAN BLOCH: Am I correct in understanding  
25 that in 1990 you were not familiar with the document

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1 before you?

2 WITNESS REYES: Yeah, this is the first time  
3 I've ever seen this document.

4 CHAIRMAN BLOCH: Mr. Kohn, I have trouble  
5 understanding the relevance of it.

6 CROSS EXAMINATION (continued)

7 MR. MICHAEL KOHN: I have no further questions  
8 on that document, Your Honor. Earlier you had some  
9 testimony about Mr. Hunt being advised about the status of  
10 air quality at Plant Vogtle. I'm going to ask you to look  
11 at a document that you should have in front of you. It's  
12 --

13 CHAIRMAN BLOCH: Mr. Kohn, I think you  
14 misspoke again. I think it's Mr. Hunt advised them about  
15 the status of air quality. Isn't that what you're trying  
16 to say?

17 MR. MICHAEL KOHN: Yes. And if you would look  
18 at the document in front of you that should be on your  
19 desk, Georgia Power's Exhibit 49. This is the transcript  
20 of the March 20, 1990 conference call.

21 MS. YOUNG: Exhibit number again?

22 MR. MICHAEL KOHN: Georgia Power Exhibit 49.

23 MS. YOUNG: Thank you.

24 MR. MICHAEL KOHN: And if you would look at  
25 transcript page 95. Mr. Chaffee, starting on line 21, is

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1 indicating -- he's stating, "Is there any way to get a  
2 hand on whether or not that contributed to this  
3 intermittent problem," referring to a moisture problem.  
4 And on page nine -- the top of page 96, he goes on to  
5 indicate if there's any way you can test for moisture.

6 And Mr. Bockhold on line ten says he's going  
7 to go ahead and take the action and determine what the dew  
8 point readings were.

9 WITNESS REYES: Yeah, I see that.

10 MR. MICHAEL KOHN: Okay. Now if you would now  
11 look at the next exhibit you have in front of you which is  
12 Georgia Power's Exhibit 50.

13 ADMINISTRATIVE JUDGE MURPHY: Mr. Kohn, does  
14 that have another identification?

15 MR. MICHAEL KOHN: Bockhold Exhibit D. And  
16 the first one was Bockhold Exhibit C. And if you would  
17 turn to page 59 of that transcript, there's a voice  
18 identified on line 21 which would be someone within the  
19 NRC asking if Georgia Power had ruled out the possibility  
20 that air quality -- poor air quality may have caused the  
21 problem.

22 And if you now look at the response by Mr.  
23 Bockhold starting on line 24, at the top of page 60, line  
24 one, and then lines 18 through 22 where Mr. Bockhold --  
25 where the NRC again asks, "So you were confident based

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1 upon tests done that the quality of the air is now  
2 satisfactory and you do not believe that was a -- the root  
3 cause of the problem before?"

4 And Mr. Bockhold says, "That is correct."

5 Based on NRC's request in the IIT transcript  
6 on March 28th to take high dew point measurements, if a  
7 high dew point measurement had been taken between March  
8 28th and this April 3rd conversation, do you believe NRC  
9 should have been advised of those high dew point readings?

10 WITNESS REYES: I don't know that we were not,  
11 but we were on site. Mr. Hunt was on site witnessing the  
12 activities over the diesels. So I have no recollection  
13 that we were advised or not advised.

14 MR. MICHAEL KOHN: Okay. If you were not  
15 advised during that time frame, would that surprise you?

16 WITNESS REYES: I don't know the nature of the  
17 request. So if we asked for it, we should have expected  
18 to receive it. And if we didn't receive it, we should  
19 have asked for it again. But you know, I -- you're asking  
20 me to speculate on something that I have no knowledge of.

21 MR. MICHAEL KOHN: I'm not --

22 WITNESS REYES: Yeah, you're asking me to  
23 speculate on something I have no knowledge of.

24 MR. MICHAEL KOHN: Let's try it to see if  
25 you're more comfortable.

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1 WITNESS REYES: Okay.

2 MR. MICHAEL KOHN: If on March 28th would you  
3 agree that the NRC requested and Georgia Power committed  
4 to taking dew point measurements of the air receivers for  
5 the diesel generator?

6 WITNESS REYES: As the question again. I'm  
7 sorry.

8 MR. MICHAEL KOHN: Yes. If you would look at  
9 Georgia Power's Exhibit 49, Bockhold Exhibit C, would you  
10 agree that on page 96, lines 11 through 14, Georgia Power  
11 agreed to take a new dew point reading of the -- with  
12 respect to the diesel air system?

13 WITNESS REYES: In that conversation that was  
14 taped, yes.

15 MR. MICHAEL KOHN: Okay. And if in fact a  
16 reading was taken the very next day, March 29, 1990, and  
17 it was -- and those readings indicated that the air  
18 quality was not satisfactory, would you expect Georgia  
19 Power to advise the NRC on March 29 about that?

20 WITNESS REYES: Based on the request, yes.

21 MR. MICHAEL KOHN: And if Georgia Power failed  
22 to advise NRC about it on March 29 and continuously failed  
23 to advise NRC about it, and then on April 3rd stated to  
24 the NRC that based upon tests done that the air quality of  
25 the air is now satisfactory, would you find that to be a

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1 less than full disclosure concerning air quality?

2 MS. YOUNG: Objection. I don't believe the  
3 record supports the statement that the NRC was not  
4 informed about the high reading on March 29th.

5 MR. MICHAEL KOHN: Not between -- it support.  
6 the -- the record is clear that there is nothing between  
7 April 3rd, and I'm up to April 3rd.

8 MS. YOUNG: Okay, but your question -- see, it  
9 was so long that you started your question one way and you  
10 may have ended another way.

11 MR. MICHAEL KOHN: All right, then let me  
12 rephrase --

13 MS. YOUNG: But the beginning of the question  
14 was about a March 29th --

15 MR. BLAKE: I'd also like a basis for when you  
16 talk about Georgia Power. I think you're talking about  
17 Mr. Bockhold's statements in April, correct -- April 3rd?

18 MR. MICHAEL KOHN: I'm talking right now --

19 MR. BLAKE: And I want to know what the basis  
20 is for his having been aware of it and having sat on it.

21 MR. MICHAEL KOHN: Well, the testimony I  
22 believe of Mr. Briney and two or three other individuals  
23 who indicated that they would have told Mr. Bockhold  
24 within a day of the high dew point reading. Now if --  
25 let's start over. You do agree that Georgia Power

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1 committed to taking new dew point measurements on March  
2 28th to the IIT?

3 WITNESS REYES: In responding to a question,  
4 the answer was that they were going to do that.

5 MR. MICHAEL KOHN: Okay. And if a high dew  
6 point reading was taken the very next day, and it's  
7 uncontested in this proceeding that on March 29, 1990 the  
8 dew point readings were 80° and 60°, and the acceptable  
9 readings had to be 50° or below -- so those would have been  
10 unacceptably high readings -- if Georgia Power knew of  
11 those unacceptably high readings on March 29, 1990 given  
12 the fact that the IIT was on site, when do you believe NRC  
13 should have been told of those high dew point readings?

14 WITNESS REYES: The answer is we should have  
15 been told when the individual who detected them became  
16 aware of them.

17 MR. MICHAEL KOHN: Okay. And if the next  
18 communication to NRC occurred on April 3, 1990, --

19 WITNESS REYES: See, that's my problem, that  
20 there were a lot of communications occurred between many  
21 Staff members and Georgia Power employees. Not all of  
22 them were taped, and I'm having difficulty answering your  
23 last question. And I always will, because I knew I had a  
24 lot of staff on site. I knew the IIT was on site, and  
25 there was communications on all times of the day.

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1           So I have no -- I don't know if we were told  
2 or not. I went --

3           MR. MICHAEL KOHN: Okay, and so therefore, if  
4 it turned out -- if the record turned out that Georgia  
5 Power did not tell the NRC timely and that the first  
6 communication Georgia Power had with the NRC about air  
7 quality was misleading in that it indicated that dew point  
8 readings were satisfactory, would that cause you some  
9 reason to question the restart decision?

10          WITNESS REYES: Not if the Staff had led --  
11 Georgia Power believed that they were satisfied otherwise.  
12 In other words, during the course of this activity, I'm  
13 sure we asked for a lot of information. But in daily  
14 dialogue, we may have said oh, we're satisfied; we don't  
15 need that now. Now, I don't know.

16          MR. MICHAEL KOHN: On April 3rd, had the Staff  
17 reached a determination?

18          WITNESS REYES: I don't know.

19          MR. MICHAEL KOHN: And so, if the Staff asked  
20 for information on March 28th and the next point in time  
21 that information was communicated was April 3rd, and the  
22 information that was communicated indicated that air  
23 quality was satisfactory when in fact the last readings  
24 indicated it was not satisfactory, would that cause you  
25 concern for restart?

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1 WITNESS REYES: Not if the IIT was satisfied.  
2 Obviously they didn't ask for it. When they didn't  
3 receive it, they didn't ask for it, right? I mean, IIT --  
4 you started with a request from the IIT for the  
5 information, and then you say they didn't receive it.  
6 Well, probably the IIT was satisfied.

7 MR. MICHAEL KOHN: How do you know the IIT was  
8 satisfied?

9 WITNESS REYES: It's the same reason that --

10 MR. MICHAEL KOHN: You're saying --

11 WITNESS REYES: I don't know that they were  
12 not requesting or requesting it. See, you only have one  
13 conversation and the other, and you want me to make a  
14 conclusion, and I can't.

15 MR. MICHAEL KOHN: All right. Would you say  
16 on Intervenor's Exhibit -- I mean Georgia Power's Exhibit  
17 50, Bockhold Exhibit D, the NRC indicates on line 21,  
18 "Have you ruled out the possibility of air quality -- poor  
19 air quality may have caused the problem," --

20 WITNESS REYES: I lost you. Are you on 50 --  
21 page 60?

22 MR. MICHAEL KOHN: Page 59.

23 WITNESS REYES: Exhibit 50?

24 MR. MICHAEL KOHN: Exhibit 50, page 59.

25 WITNESS REYES: Okay, I'm sorry; go ahead.

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1 MR. MICHAEL KOHN: Line 21. Does this  
2 statement from the NRC, "Have you ruled out the  
3 possibility that air quality," --

4 WITNESS REYES: You mean from --

5 MR. MICHAEL KOHN: Yes, but that's been  
6 identified in this proceeding as from the NRC.

7 WITNESS REYES: Okay. I have nothing in this  
8 proceeding before, so I don't know that.

9 MR. MICHAEL KOHN: "Have you ruled out the  
10 possibility that air quality -- poor air quality may have  
11 caused the problem?" Does that statement indicate to you  
12 that NRC is still considering air quality?

13 WITNESS REYES: No, it says have you ruled out  
14 the possibility that the air quality have caused a  
15 problem. It doesn't mean that they didn't have high dew  
16 point readings. There's a difference, at least in my  
17 mind. You need to ask the people asking the question.  
18 But in my mind, there's a difference between having a high  
19 dew point reading one day and it being a problem.

20 MR. MICHAEL KOHN: In order to determine  
21 whether you had -- in order for the NRC to determine  
22 whether there was a problem with air quality they would  
23 need to know the dew point measurements, wouldn't they?  
24 Didn't they think they needed that information?

25 WITNESS REYES: They asked for it. You showed

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1 me in previous record that they did.

2 MR. MICHAEL KOHN: Could, in your estimation,  
3 Georgia Power be confident that air quality was  
4 satisfactory if the last readings were high and there was  
5 no follow up to determine the status of the air quality  
6 subsequent to the high readings?

7 WITNESS REYES: I don't know what the basis  
8 were that they made the conclusion, but I would have had a  
9 question on it.

10 MR. MICHAEL KOHN: Okay. As I understand it,  
11 neither of you gentlemen attended the April 30, 1990  
12 meeting between NRC and Georgia Power, is that correct?

13 WITNESS REYES: I did not attend that meeting.

14 WITNESS ZIMMERMAN: Nor did I.

15 MR. MICHAEL KOHN: Okay. But you did sit in  
16 and listen to testimony as to what occurred during that  
17 meeting, correct?

18 WITNESS REYES: Very briefly yesterday.

19 WITNESS ZIMMERMAN: Yes.

20 MR. MICHAEL KOHN: Did either of you gentlemen  
21 receive any feedback from that meeting as to what had  
22 occurred before listening to the testimony yesterday?

23 WITNESS ZIMMERMAN: No.

24 WITNESS REYES: I'm sure I received feedback,  
25 I just don't remember what it was. It was five years ago.

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## 1 BOARD EXAMINATION

2 CHAIRMAN BLOCH: Well, did you remember anyone  
3 telling you that there were members of the NRC Staff who  
4 thought that Georgia Power had a problem with having a  
5 cowboy cavalier attitude?

6 WITNESS REYES: I remember the general topic  
7 of the meeting, but I don't recall the gist of the  
8 feedback that I got back after the meeting. You need to  
9 understand the people in the meeting were superiors of  
10 mine. So even though I got some feedback, I don't recall  
11 the detail -- all the details, Judge.

## 12 CROSS EXAMINATION

13 MR. MICHAEL KOHN: Why didn't you attend that  
14 meeting?

15 WITNESS REYES: Well, the meeting was  
16 physically in Washington, and we don't take the whole  
17 Region 2 office for a meeting. I mean, my superior was  
18 there. There was no need for me to go -- just logistics.

19 MR. MICHAEL KOHN: And was the subject matter  
20 of the meeting discussed with you before it took place?

21 WITNESS REYES: I didn't decided to have the  
22 meeting or the agenda for the meeting.

23 MR. MICHAEL KOHN: And based on your current  
24 understanding of what occurred during that meeting, what  
25 effect would you expect the Licensee -- let me rephrase

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1 it. What activity would you expect the Licensee to engage  
2 in to remedy the issues raised during that meeting?

3 WITNESS REYES: I'm not sure, because I was  
4 not on the detailed discussion in the meeting. So  
5 depending on the discussion in the meeting, the corrective  
6 action had to gauge to that. So I couldn't delineate to  
7 you what I would have expected. I was not in the meeting.

8 MR. MICHAEL KOHN: Well, would you agree with  
9 me that the accuracy of information as you identified in  
10 Intervenor's Exhibit II-83 that the significance of  
11 submitting inaccurate information should be considered in  
12 light of Georgia -- of NRC's admonishment during the April  
13 30 meeting to NRC -- excuse me, to Georgia Power?

14 WITNESS REYES: I think you need to make a  
15 distinction of the four examples during the operational  
16 safety inspection and the previous issues in terms of  
17 information. The four examples on this team inspection  
18 were verbal information provided as a response to a  
19 question from an NRC inspector by the working level staff.

20 One example was from a supervisor, but the  
21 other three were working level staff. So -- and it was  
22 quickly resolved while the team was on site. So in my  
23 mind, it's a different situation.

24 MR. MICHAEL KOHN: Okay.

25 WITNESS ZIMMERMAN: Let me add to that if I

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1 can. I don't know the specifics in this particular case  
2 with these examples, but it is not uncommon in the  
3 interactions that the NRC has with Licensee staff that  
4 periodically unintentionally we're given bad information,  
5 both orally and in writing.

6 We, to an extent, expect that with all the  
7 dialogues that we have and with people trying to provide  
8 us the best information they have available at the time,  
9 that sometimes that information will change. In the case  
10 that resulted in the civil penalty, that line was crossed  
11 in our determination.

12 But it should be viewed that this is not a  
13 black and white line that anytime information is provided  
14 to the NRC that is not complete and accurate -- we need to  
15 look at each one on a case by case basis and consider the  
16 merits of how we got that information. We are very  
17 information dependent, and we need to foster the type of  
18 communication with Licensees that they don't feel that  
19 they're on pins and nails every time we have a dialogue.

20 Now, that's not to make light of this case  
21 where we have back drop of poor communications associated  
22 with diesel generator reporting, but I felt a need to put  
23 that in the record.

24 WITNESS REYES: And I need to expand on that.  
25 On the four examples that were given to the team while we

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1 were on site, we had an enforcement conference because we  
2 were concerned about this issue and make sure we explored  
3 it completely, fully. And we concluded that in fact there  
4 were no violations involved. And the four examples of  
5 information provided verbally to a question by a member of  
6 the NRC was in fact an error by the individual -- just  
7 simply an error, and was quickly resolved.

8 So the character, the circumstances, the level  
9 of the people involved, in my mind that's completely  
10 different than the previous April 30th issue.

11 MR. MICHAEL KOHN: Based on the April 30  
12 meeting that Georgia Power had with the NRC, would you be  
13 surprised if the discussion of management following that  
14 meeting after Georgia Power had told them what had  
15 happened -- would you be surprised if management indicated  
16 that nobody's going to speak their mind, that the plant is  
17 not going to figure out how to fix the problem?

18 WITNESS REYES: I don't understand the  
19 question.

20 WITNESS ZIMMERMAN: Yeah, I don't either.

21 MS. YOUNG: And I object to the form and the  
22 foundation.

23 MR. BLAKE: Count me in on the objection.

24 MR. MICHAEL KOHN: With respect to -- would  
25 you expect Georgia Power to engage in some form of

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1 corrective action to address the concerns raised in he  
2 April 30 meeting?

3 WITNESS ZIMMERMAN: Yes.

4 MR. MICHAEL KOHN: Okay. Would it surprise  
5 you that the scope of those corrective actions left  
6 managers at the plant making the -- with the following  
7 impressions that they would not open their mouth because  
8 they were afraid it would ruin their career, that people  
9 would not speak to --

10 WITNESS REYES: To whom? I'm sorry, I don't  
11 understand the --

12 MR. MICHAEL KOHN: Within --

13 CHAIRMAN BLOCH: I think you're being vague as  
14 to what you're talking about.

15 MS. YOUNG: Could you refer to an exhibit?

16 MR. MICHAEL KOHN: Yes.

17 MS. YOUNG: Otherwise, the answer's going to  
18 be meaningless.

19 MR. MICHAEL KOHN: Intervenor -- excuse me, if  
20 the panel would look at Intervenor's Exhibit 247, copies  
21 of which should be on your desk? The document I have  
22 asked you to look at, Intervenor's II-247, is a portion of  
23 a transcript of one of Mr. Mosbaugh's tapes, tapes 99.  
24 And to put this tape in perspective, after -- it's dated  
25 May 8, 1990.

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1 And after the April 30 meeting, management  
2 from SONOPCO Project came to the site to address this  
3 issue. Would it surprise you that based on the attempt of  
4 Georgia Power's management to resolve this issue that  
5 people would state -- if you look at the statement by Mr.  
6 Parton, second time he speaks on this tape, he says -- the  
7 question is -- there were some supervisors in there.

8 Now he's sitting there with his bosses five  
9 levels above. "Should I open my mouth and ruin my career  
10 now or should I keep my mouth shut?" Do you believe --

11 WITNESS REYES: I can't find that statement.

12 MR. BLAKE: Well, I'm going to -- wait until  
13 he gets to a question mark, Mr. Reyes, because there's  
14 going to be an objection.

15 MR. MICHAEL KOHN: All right. And if you  
16 would --

17 CHAIRMAN BLOCH: Mr. Kohn, why don't you  
18 address the relevance of this question?

19 MR. BLAKE: I want him also to address the  
20 Board's ruling on September 15th of 1995 at transcript  
21 page 14182 through 83 that if he wanted to get this  
22 exhibit into evidence, he would need to file a written  
23 motion. I think this is a remarkable back door shot at  
24 trying to get around that Board ruling.

25 MR. MICHAEL KOHN: That's with respect to when

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1 it was originally identified and I don't think the word --  
2 I don't think there were questions asked. They were just  
3 asked how to get introduced at that time at the hearing.  
4 Now I'm asking with respect to specific witnesses what --  
5 how they would consider these responses in light to the  
6 April 30 meeting, and whether it would indicate to them  
7 that during the 1990 time frame there was a problem at the  
8 site with respect to corrective actions.

9 BOARD EXAMINATION

10 CHAIRMAN BLOCH: Mr. Reyes, what was -- did  
11 you have a basis for believing whether or not Georgia  
12 Power took adequate corrective action after the April 30th  
13 meeting at the NRC?

14 WITNESS REYES: No. Either way, I didn't --  
15 that they didn't or they did, I did not.

16 CHAIRMAN BLOCH: And were you aware of the  
17 conversation or the transcript of the conversation that  
18 Mr. Kohn is asking you about?

19 WITNESS REYES: This is the first time I am  
20 aware of this, and I can't even find it -- the statement  
21 here.

22 CHAIRMAN BLOCH: So I don't think it's  
23 relevant, Mr. Kohn.

24 MR. MICHAEL KOHN: Well, Your Honor, I think  
25 it is relevant to the effect that -- whether had this

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1 panel known about these observations of the management and  
2 persons on site whether it would affect their overall  
3 conclusion about the restart decision and about their  
4 management's --

5 CHAIRMAN BLOCH: Restart decision was made  
6 when?

7 MR. MICHAEL KOHN: Yeah, restart decision was  
8 the -- well, --

9 CHAIRMAN BLOCH: So what's the question?

10 MR. MICHAEL KOHN: Whether it would affect  
11 their overall assessment in the -- between March 30 and  
12 the end of 1990.

13 CHAIRMAN BLOCH: So Mr. Reyes, if you were to  
14 learn that there was inadequate corrective action after  
15 the April 30th meeting, would that affect your judgement  
16 on -- expressed on page seven of your testimony in number  
17 three, the overall performance of GPC?

18 MS. YOUNG: Is there a record of foundation  
19 for the Board's question?

20 CHAIRMAN BLOCH: Intervenor's attempting to  
21 show that the --

22 MR. MICHAEL KOHN: Intervenor's attempting to  
23 indicate that in the 1990 time frame that one of the  
24 issues that should be considered is whether Georgia Power  
25 took effective corrective action in response to the April

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1 30 cowboy cavalier meeting. And I'm asking the panel  
2 whether if they had known about this level of concern at  
3 the site as to being able to freely voice concerns would  
4 affect their decision or impact on their decision in any  
5 way on the adequacy of management during the 1990 time  
6 frame.

7 MR. BLAKE: And that's my objection. This  
8 level of concern is an evidentiary matter which the Board  
9 has said no unless a written motion is filed to change the  
10 Board's mind. I've seen no written motion, and that's why  
11 I characterized it the way I have.

12 CHAIRMAN BLOCH: Mr. Reyes, how did you decide  
13 that it was not important to find out about the adequacy  
14 of the response to the April 30th meeting in assessing  
15 overall performance on communication?

16 WITNESS REYES: What I took into account was  
17 my observation. I said earlier at the beginning what were  
18 you responding to a question -- what were the basis for my  
19 testimony. And I answered that -- if I recall right --  
20 based on my staff, personal direct observations during  
21 that period of time. So that's what I used to make that  
22 conclusion.

23 CHAIRMAN BLOCH: Well, did your staff reach  
24 any conclusions as to whether there was an adequate  
25 response to the April 30th meeting?

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1 WITNESS REYES: I don't recall that we did  
2 either way.

3 CHAIRMAN BLOCH: I think we may have milked  
4 this all we can, Mr. Kohn.

5 MR. MICHAEL KOHN: All right. If you would  
6 look at the last --

7 CHAIRMAN BLOCH: I'm sorry, I notice that Mr.  
8 Zimmerman wanted to say something. I'm sorry.

9 WITNESS ZIMMERMAN: I just wanted to point out  
10 that even if Georgia Power did not react the way we  
11 intended from the April 30th meeting, we don't regulate  
12 attitude. It makes our job much easier to do if we have  
13 an effective working relationship with the Licensee. But  
14 if in fact we don't have a good working relationship, we  
15 have to be able to rise above that and make sure that the  
16 regulations are being met.

17 Holding a meeting on April 30th, the types of  
18 concerns that Dave Matthews voiced yesterday and the day  
19 before, are important to try to improve that working  
20 relationship. But if a plant does not have an appropriate  
21 attitude in our mind for having a good working  
22 relationship, we don't regulate that.

23 It forces us to try harder to get the  
24 information that we need. There are challenges there.  
25 But that by itself -- it was not -- they don't produce

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1 safety problems -- is not an area that we have  
2 jurisdiction over. There are licensees that are good  
3 operators that don't enjoy our company.

4 CHAIRMAN BLOCH: Mr. Zimmerman, I'm having  
5 trouble understanding, because on page seven, line three  
6 of your testimony, you are reaching conclusions about  
7 performance and communicating. And what you're saying to  
8 me is that whether or not they responded adequately to the  
9 NRC's concern about communication is not relevant to this  
10 conclusion?

11 WITNESS ZIMMERMAN: Dealing separately from  
12 the complete and accurate information in the NOV. There  
13 were requirements that were not followed in that case.

14 CHAIRMAN BLOCH: Okay, so your concerned about  
15 accuracy but not attitude, is that what you're saying?

16 WITNESS ZIMMERMAN: I am concerned about  
17 attitude, and I will work with the Licensee to try to  
18 improve it. But if I can't, I need to work harder to  
19 focus on whether the safety is being satisfied at that  
20 plant. If I cannot rectify the problem of a good healthy  
21 working relationship with good communication, that is  
22 still acceptable as long as I'm satisfied that I am  
23 getting complete and accurate information.

24 I'm trying to draw a distinction here between  
25 the Licensee's attitudinal dealings with us and how they

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1 may or may not manifest themselves in a real safety issue.  
2 So I look at the April 30th meeting and the discussion I  
3 heard yesterday as good preemptive strikes to try to  
4 improve that working relationship, identify areas where we  
5 have some concern, and to strive for a better working  
6 relationship in the future.

7 CHAIRMAN BLOCH: Yes, I thought I understood  
8 the April 30th meeting as being addressed to attitudes  
9 that were directed to specific problem -- that had caused  
10 specific problems. You have a different understanding  
11 than that?

12 WITNESS ZIMMERMAN: I heard that, but I also  
13 listened to some testimony with regard to Mr. Bockhold.  
14 And I've never met Mr. Bockhold, but I've gotten the  
15 impression that NRC individuals that have considerable  
16 dealings with him find it difficult to deal with him. My  
17 point of view is I would need to look beyond that to  
18 understand what his safety consciousness is with respect  
19 to safely operating the Vogtle facility.

20 Whether or not he likes me, likes my people,  
21 likes the agency as a whole, there is a step there that's  
22 important to address. So having intermediate meetings and  
23 discussion to try to address what we can do to improve  
24 effective communications is very important. And if we see  
25 it starting to manifest itself in safety issues, that

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1 makes it even more important.

2 But I wanted you to hear that I feel strongly  
3 that if there is just a difficult individual to deal with  
4 at a site, the NRC has to rise above that in order to work  
5 harder to make sure that we're getting the necessary  
6 information to ensure that plant's operated safely.

7 CHAIRMAN BLOCH: And your understanding is  
8 that the April 30th meeting was directed to a difficult  
9 individual and not to anything beyond that that related to  
10 safety?

11 WITNESS ZIMMERMAN: No. I view it in two  
12 parts. The issues that were brought up -- again, I don't  
13 know the specifics, but there were issues that were  
14 discussed yesterday with regard to cutting corners  
15 associated with technical specifications. So there sounds  
16 as though there was a history of some problems that were  
17 spilling over into the safety area.

18 And those are very important, and I would  
19 follow those up. It is also important that even without  
20 that, having a meeting with the Licensee where we're  
21 having communication challenges and difficulties is  
22 likewise an important meeting. But I want to draw the  
23 distinction again on the attitude of the Licensee or  
24 members of the Licensee staff by itself is not something  
25 that we regulate.

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1 We need to be able to get beyond that.

2 CHAIRMAN BLOCH: Mr. Kohn?

3 CROSS EXAMINATION (continued)

4 MR. MICHAEL KOHN: Did you indicate, Mr.  
5 Zimmerman, that attitude problems coupled with not getting  
6 complete and accurate information would be troublesome?

7 WITNESS ZIMMERMAN: Yes. Regardless of the  
8 attitude, not getting complete and accurate information  
9 can be troublesome. As I indicated earlier, there are  
10 instances where we receive information that is not  
11 complete and accurate; and upon review, is not  
12 troublesome. Because the intent was there to provide the  
13 best knowledge the person had at the time.

14 MR. MICHAEL KOHN: Do you recall stating that  
15 an attitude problem is one thing and we could rise above  
16 it as long as we're getting complete and accurate  
17 information?

18 MR. BLAKE: I object. Let's assume he recalls  
19 it or let's assume he doesn't. Let's get to the question.  
20 I don't think it's important whether he recalls it or he  
21 doesn't.

22 MR. MICHAEL KOHN: Is that true?

23 WITNESS ZIMMERMAN: Repeat it for me, please.

24 MR. BLAKE: What true?

25 MR. MICHAEL KOHN: Is it your opinion that an

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1 attitude problem is one thing as long as it's not coupled  
2 with difficulty in getting complete and accurate  
3 information?

4 CHAIRMAN BLOCH: He's testified to that.

5 MR. MICHAEL KOHN: Okay.

6 CHAIRMAN BLOCH: Mr. Kohn, are you almost done  
7 with your 15 minutes?

8 MR. MICHAEL KOHN: I'm almost done, Your  
9 Honor.

10 CHAIRMAN BLOCH: How many minutes does that  
11 mean?

12 MR. MICHAEL KOHN: I think we're looking at  
13 about seven more minutes, Your Honor.

14 CHAIRMAN BLOCH: Well, we'll take a ten minute  
15 break.

16 (Whereupon, the proceedings went off the  
17 record from 2:25 p.m. until 2:30 p.m.)

18 CHAIRMAN BLOCH: Mr. Kohn?

19 CROSS EXAMINATION (continued)

20 MR. MICHAEL KOHN: Gentlemen, is it my  
21 understanding that an allegation is not looked at or --  
22 let me rephrase it.

23 CHAIRMAN BLOCH: You're not going to ask him  
24 about your understanding, are you?

25 MR. BLAKE: You started off is it my

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1 understanding. Not a good start.

2 MR. MICHAEL KOHN: You are aware that there  
3 was an allegation concerning intentional wrongdoing  
4 associated with the opening of a dilution valve at Plant  
5 Vogtle?

6 WITNESS ZIMMERMAN: Yes.

7 WITNESS REYES: Yes.

8 MR. MICHAEL KOHN: Were you aware of the  
9 status of that allegation as of the end of 1990?

10 WITNESS REYES: Yes.

11 MR. MICHAEL KOHN: And what was the status?

12 WITNESS REYES: I don't recall the details,  
13 but the Staff assisting OI was a Region 2 person. And I  
14 was aware contemporaneous with the activities that were  
15 ongoing.

16 MR. MICHAEL KOHN: Was a determination reached  
17 before the end of 1990 whether there was wrongdoing?

18 WITNESS REYES: I don't recall the time frame.

19 MS. YOUNG: Mr. Kohn, is the reason for your  
20 questioning that the dilution valve issue has something to  
21 do with the accuracy of communications with the NRC which  
22 was the statement in the testimony that you were probing?

23 MR. MICHAEL KOHN: The witnesses understanding  
24 of the dilution valve incident and whether that -- how  
25 that played into their determination for the 1990 time

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1 frame.

2 MS. YOUNG: Well, their determination is with  
3 respect to overall communications with the NRC. You have  
4 to draw a nexus in terms of the testimony these witnesses  
5 are here to present.

6 CHAIRMAN BLOCH: Well, we already know the  
7 understanding, so what's next?

8 MR. MICHAEL KOHN: Were you aware that Mr.  
9 Hobby had filed a Department of Labor retaliation claim in  
10 1990?

11 MR. BLAKE: I object. Judge Bloch, I have  
12 tried to be as patient as possible. This one pushes me  
13 over the edge. What is the relationship to their  
14 testimony? Cite me to a page. Also, while you're at it,  
15 talk about the scope of the proceeding.

16 MR. MICHAEL KOHN: The question goes to the  
17 following: whether this panel was aware -- whether if  
18 this panel was aware that Georgia Power intentionally  
19 violated Section 210 of the Energy Reorganization Act in  
20 1990, would that affect their determination on the overall  
21 performance of Georgia Power.

22 MR. BLAKE: That doesn't help me, I'll tell  
23 you.

24 CHAIRMAN BLOCH: The performance in  
25 communicating with the NRC that we're questioning -- I

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1 don't see how a violation of that law would have to do  
2 with their overall performance in communicating with the  
3 NRC.

4 MR. MICHAEL KOHN: Well, it would because the  
5 NRC required in that time period a response to a "chilling  
6 effect" letter and other -- and Georgia Power was required  
7 to respond to NRC in 1990.

8 MR. BLAKE: It doesn't come close yet to  
9 coming within the scope of this proceeding about whether  
10 during 1990 Georgia Power said the right kinds of things  
11 about diesel generators or didn't say the right kinds of  
12 things to the NRC about diesel generators, or in fact  
13 about air quality. And how Mr. Hobby was treated is in  
14 considerable dispute, not at the moment in this  
15 proceeding.

16 Obviously I didn't realize it until his  
17 question, but at least in other proceedings. Judge Bloch,  
18 I think this is wholly inappropriate.

19 CHAIRMAN BLOCH: Knowledge of the Hobby case  
20 is irrelevant. There might be aspects of chilling effect  
21 which would be relevant, but you're going to have to have  
22 some way of documenting their knowledge or --

23 MR. MICHAEL KOHN: If the Board finds that the  
24 questioning is irrelevant with respect to their knowledge  
25 of a complaint and -- then I'm not going to pursue this

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1 any further.

2 CHAIRMAN BLOCH: Yeah, their knowledge of the  
3 complaint would not be relevant.

4 MR. MICHAEL KOHN: And specifically, had they  
5 known that the disposition of the complaint was that the  
6 sole reason the discrimination occurred was for improper  
7 purposes, whether that would affect --

8 CHAIRMAN BLOCH: Which disposition? They  
9 didn't know it in 1990.

10 MR. MICHAEL KOHN: That is correct. But my  
11 question is had they had that information in front of them  
12 in 1990, would that affect their determination?

13 MS. YOUNG: Judge Bloch, we have a lot of  
14 problem with the Board's ruling, Intervenor's questions.  
15 I don't understand the basis of the ruling that knowledge  
16 of the Hobby case is relevant to the state of  
17 communications in 1990. We had motions to strike --

18 CHAIRMAN BLOCH: I ruled it wasn't. I ruled  
19 it wasn't relevant. I didn't rule it was relevant.

20 MR. MICHAEL KOHN: I just wanted to make sure  
21 that the rule we understood -- how we were using the  
22 document. And I have no further questions on that area.

23 CHAIRMAN BLOCH: Okay.

24 MR. MICHAEL KOHN: The last is -- if the  
25 witnesses could look at Intervenor's II-271, which for the

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1 record is an October 28, 1994 memorandum from Mr.  
2 Robinson. Can the panel tell me whether they reviewed  
3 this document prior to today?

4 WITNESS ZIMMERMAN: Yes.

5 MR. MICHAEL KOHN: And can you tell me whether  
6 you reviewed this document prior to providing testimony --

7 CHAIRMAN BLOCH: Wait a second. You asked the  
8 panel, and I got -- we got an answer from one person.

9 WITNESS REYES: I'm still reading and trying  
10 to --

11 CHAIRMAN BLOCH: Hold on a for a second if you  
12 want an answer.

13 WITNESS REYES: Yeah, I have previously read  
14 that document.

15 CHAIRMAN BLOCH: Mr. Kohn, it's your turn.

16 MR. MICHAEL KOHN: I have no further  
17 questions.

18 CHAIRMAN BLOCH: Mr. Blake?

19 MR. BLAKE: None.

20 CHAIRMAN BLOCH: Staff? Does Staff want a  
21 recess?

22 MS. YOUNG: You're so impatient. Just a few  
23 moments.

24 CHAIRMAN BLOCH: No, I just --

25 (Laughter.)

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1 MS. YOUNG: If I want a recess, I'll ask for  
2 it.

3 CHAIRMAN BLOCH: Okay.

4 MR. MICHAEL KOHN: Your Honor, there is one  
5 thing I'd like to mention for the record so it's accurate.  
6 With respect to the Hobby complaint, Intervenor was  
7 referring to Board Notification -- the complaint and  
8 decision by the secretary -- excuse me, the decision by  
9 the Secretary of Labor attached to Board Notification 95-  
10 16.

11 CHAIRMAN BLOCH: Thank you. Now we have a  
12 clearer record.

13 MR. MICHAEL KOHN: And Intervenor also would  
14 like to move for the admission of --

15 CHAIRMAN BLOCH: Now wait a second. Oh, you  
16 were going to move it for admission of documents as part  
17 of your case?

18 MR. MICHAEL KOHN: Yes. As Intervenor's  
19 Exhibit II-83.

20 CHAIRMAN BLOCH: Hold on for a second.

21 MR. BLAKE: What's going on? Is this all  
22 because Mitzi wanted a couple of minutes to -- we have to  
23 be penalized by this?

24 (Laughter.)

25 CHAIRMAN BLOCH: I think Intervenor forgot to

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1 do something. He's now asking for admission of II-83.

2 MR. MICHAEL KOHN: Yes.

3 MS. YOUNG: And what's the basis for II-83  
4 being admitted?

5 MR. MICHAEL KOHN: The questioning of the  
6 witness with respect to page three and four.

7 MS. YOUNG: So you need the entire document in  
8 evidence because questions were asked about three and  
9 four?

10 MR. MICHAEL KOHN: Well, I think there's --  
11 the standing is that to the extent used, the document goes  
12 into evidence. I'm not looking to -- for any other issue.  
13 So yes, to that extent, I seek to move in Intervenor's  
14 Exhibit 83.

15 MR. BLAKE: I do not object to II-83 insofar  
16 as it is used to clarify what it was the testimony was  
17 about. I do object it is coming in for the truth of the  
18 matter as it occurs in that document or for some other  
19 findings basis. To the extent it's clarification and  
20 assists the record reviewer in knowing what it was the  
21 testimony was about, I don't have any objection.

22 CHAIRMAN BLOCH: Of course if that's true, we  
23 don't need it as -- admission into evidence.

24 MR. BLAKE: You blew my cover.

25 MS. YOUNG: That's true.

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1 MR. MICHAEL KOHN: Your Honor, I'd like to  
2 note that Georgia Power I believe moved into evidence the  
3 SALP Report. And I think that this document is in the  
4 same realm as the SALP Report as far as its admissibility.

5 CHAIRMAN BLOCH: All right, there was no  
6 objection with the understanding that it was for the  
7 purpose of clarifying the discussion with the witnesses.  
8 Do you have any objection to that limitation?

9 MR. MICHAEL KOHN: I don't have an objection  
10 to that limitation, Your Honor. And I think that the  
11 cover pages one and two of the exhibit should also be  
12 moved into evidence.

13 CHAIRMAN BLOCH: The same purpose? To clarify  
14 the discussion with the witnesses?

15 MR. MICHAEL KOHN: Yes.

16 CHAIRMAN BLOCH: For those limited purposes,  
17 those indicated sections are admitted.

18 (Whereupon, the above-referenced  
19 document, previously marked as  
20 Intervenor's Exhibit II-83 for  
21 identification, were received in  
22 evidence.)

23 MR. MICHAEL KOHN: Your Honor, Intervenor  
24 would also move for the admission of II-247, but I  
25 understand that Georgia Power is objecting and is

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1 requesting a written motion that we don't object to filing  
2 that.

3 CHAIRMAN BLOCH: All right, then we will not  
4 act on your motion.

5 REDIRECT EXAMINATION

6 MS. YOUNG: Good afternoon. The first issue  
7 I'd like to address to Mr. Reyes. Mr. Reyes, you were  
8 asked a number of questions about the accuracy of  
9 information that had been provided to the NRC with respect  
10 to diesel generator counts. Do you remember that  
11 questioning?

12 WITNESS REYES: Yes, yes, I do.

13 MS. YOUNG: And Mr. Kohn was trying to pin  
14 down through you a period of time that a meeting in which  
15 a reconsideration of the propriety of the restart approval  
16 on April 12, 1990 may have occurred.

17 WITNESS REYES: Yeah, I recall the question.

18 MS. YOUNG: Do you have -- are you --

19 BOARD EXAMINATION

20 CHAIRMAN BLOCH: I'm not sure that he  
21 characterized it that way. Was that what was being done,  
22 a reconsideration of the propriety of the initial  
23 determination?

24 WITNESS REYES: The decision -- I mean the  
25 discussion in the meeting was whether we should reconsider

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1 the April 12 decision to let the unit start up, not that  
2 we had information that the number of counts was different  
3 than presented on the April 9th --

4 CHAIRMAN BLOCH: All right, so you're looking  
5 to whether or not you would now decide to change your mind  
6 about the restart?

7 WITNESS REYES: Correct, correct.

8 REDIRECT EXAMINATION (continued)

9 MS. YOUNG: Now you indicated to Mr. Kohn you  
10 thought that you had received -- or either your staff, Mr.  
11 Brockman, had received an indication that the April 9th  
12 letter the diesel generator start count information was  
13 incorrect. Are you sure that testimony is accurate?

14 WITNESS REYES: Yeah, I don't know the exact  
15 words in the communications, but the NRC Staff in its  
16 internal discussion on this matter knew that the  
17 information provided in the LER and the numbers in the  
18 viewgraph of April 9th were in question when we revisited  
19 the issue.

20 When we revisited the decision, we knew that  
21 the numbers were in both documents. Maybe not the same  
22 numbers, maybe not counted the same, but we revisited the  
23 decision knowing that there was a question on the counts.  
24 It was also on the April 9th viewgraph.

25 MS. YOUNG: So any meeting in which a

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1 consideration of inaccurate diesel generator start counts  
2 and their effect on the restart decision would have taken  
3 place after the April 19th LER?

4 WITNESS REYES: It could have been. I don't  
5 have a good recollection on the time frame where we  
6 received the phone calls since they were not to me  
7 personally.

8 MS. YOUNG: You indicated you thought it was a  
9 short period of time. You said somewhere between three to  
10 seven or ten days.

11 WITNESS REYES: It could have been longer. I  
12 don't have an exact account on the days.

13 MS. YOUNG: Do you know whether that  
14 reconsideration may have occurred in May of 1990?

15 WITNESS REYES: It could have.

16 MS. YOUNG: Mr. Kohn asked you a number of  
17 questions about communications between the IIT and Georgia  
18 Power concerning dew point readings at the site. Do you  
19 recall those questions?

20 WITNESS REYES: Yes.

21 MS. YOUNG: And of concern to him was a high  
22 dew point reading on March 29, 1990. He indicated in  
23 questioning, and I think he asked it hypothetically, if  
24 the Staff had not been told about that reading would that  
25 have an effect on the ability of the NRC to make

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1 determinations about the acceptability of air quality. Do  
2 you remember the gist of those questions?

3 WITNESS REYES: Yes, I do.

4 MR. MICHAEL KOHN: The reading prior to April  
5 3, 1990.

6 MS. YOUNG: Yeah, I said March 29th. Is that  
7 not prior to April 3rd?

8 CHAIRMAN BLOCH: Is that the wrong reading,  
9 March 29th?

10 MR. MICHAEL KOHN: No, the March 29th reading,  
11 but the time frame is limited to -- up until April 3rd.

12 MS. YOUNG: Of your question, but maybe not my  
13 question.

14 MR. MICHAEL KOHN: Okay.

15 MS. YOUNG: And he's anticipating the question  
16 I had. The decision -- the presentation associated with  
17 restart happened on April 9th, is that your recollection?

18 WITNESS REYES: Correct.

19 MS. YOUNG: If the IIT was given information  
20 about a high reading or dew point readings taken on March  
21 29, 1990 before the April 9th meeting, would that cause  
22 you any concern about whether there had been adequate  
23 communications between GPC and the IIT regarding dew  
24 points?

25 WITNESS REYES: No, we would have relied on

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1 the IIT. The IIT leader was part of the decision to  
2 restart. So they would have just waited for the IIT team  
3 leader to render his judgement on that.

4 MS. YOUNG: I'm going to show you a document  
5 that's been marked in our proceeding as GPC Exhibit II-  
6 179, Bockhold Exhibit X, and ask you to look at page four.

7 MR. MICHAEL KOHN: Would you object to me  
8 looking over the witness' shoulder on the document?

9 MS. YOUNG: No problem. I can't find another  
10 copy.

11 MR. MICHAEL KOHN: Okay.

12 WITNESS REYES: Yes, I have read the  
13 statement.

14 MS. YOUNG: I don't have my copy of the  
15 transcript.

16 WITNESS REYES: Okay.

17 MS. YOUNG: There's a statement there near the  
18 bottom of the page, line 20 some odd.

19 WITNESS REYES: Line 21.

20 MS. YOUNG: What does it say?

21 WITNESS REYES: Mr. Bockhold is responding to  
22 a question from Mr. Chaffee, the IIT team leader; and Mr.  
23 Bockhold responds as follows: "Okay, on the dew point  
24 situation, yesterday afternoon it came to my attention  
25 that on the 29th of March we had run a test and the test

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1 on the dew point was unsatisfactory."

2 "So you know, we had some concerns about why  
3 the test on the A diesel wasn't satisfactory on the 29th."  
4 And it continues.

5 MS. YOUNG: Could you read the next page?

6 WITNESS REYES: "And we're pulling in together  
7 a bunch of information." Do you want me to continue  
8 reading? "At this point, and this is speculation on my  
9 part, the evidence is tending to point to a bad  
10 instrument. A bad dew point sensor instrument, and we  
11 only have one on site." Do you want me to keep reading?

12 MS. YOUNG: No, that's enough. Thank you.  
13 And what date did that IIT phone call take place -- the  
14 meeting? What's the date of that transcript?

15 WITNESS REYES: Friday, April 6, 1990.

16 MS. YOUNG: I'm going to show you another  
17 transcript of a telephone conference between GPC and the  
18 IIT. This one's been marked in our proceeding as GPC II-  
19 61, Ward C. You need to look over the first two pages.  
20 Are you looking at pages three and four of that  
21 transcript?

22 WITNESS REYES: Yes, I am. I have read the  
23 two pages.

24 MS. YOUNG: Okay. Do you see an indication  
25 there that GPC was sharing information about dew point

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1 readings with the IIT on April 9th?

2 WITNESS REYES: Yes, yes.

3 MS. YOUNG: And that was prior to the restart  
4 decision. Do you know whether this meeting would have  
5 been prior to the decision on restart or subsequent?

6 WITNESS REYES: Yes, yes, it was.

7 MS. YOUNG: The Staff has no further  
8 questions.

9 CHAIRMAN BLOCH: Mr. Kohn?

10 RECROSS EXAMINATION

11 MR. MICHAEL KOHN: Thank you. Mr. Reyes, if -  
12 - I think you were looking at Georgia Power exhibit of an  
13 April 6th IIT transcript.

14 WITNESS REYES: The last document?

15 CHAIRMAN BLOCH: No, it's not the last one.

16 MR. MICHAEL KOHN: The second to the last. I  
17 think it was Bockhold X.

18 WITNESS REYES: I don't have it with me.

19 CHAIRMAN BLOCH: Let the record show that the  
20 witness now has the exhibit.

21 MR. MICHAEL KOHN: The portion you're reading  
22 with Mr. Bockhold's statement about it was brought to his  
23 attention yesterday, do you read that to indicate that  
24 Georgia Power personnel brought it to management's  
25 attention and now it's being reported to NRC?

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1 WITNESS REYES: Could be interpreted many  
2 ways. One way could be that Mr. Bockhold was -- realized  
3 that the data provided from the 29th of March was a high  
4 dew point or unsatisfactory. It's not clear whether they  
5 had to point it out to him or he just realized it.

6 MR. MICHAEL KOHN: Well, would it surprise you  
7 that the person who pointed it out to Mr. Bockhold for the  
8 first time was at the NRC?

9 WITNESS REYES: I can't tell that from this  
10 discussion.

11 MR. MICHAEL KOHN: And would it -- are you  
12 aware of Georgia Power generally filing documents with the  
13 NRC in response to the Notice of Violation that tend to  
14 indicate that Georgia Power self reported it -- the high  
15 dew point readings to the NRC?

16 WITNESS REYES: I don't recall.

17 MR. MICHAEL KOHN: Now can you tell me -- I  
18 believe this statement also indicates that Mr. Bockhold  
19 stated that there was only one dew point instrument out on  
20 site at that time, is that correct?

21 WITNESS REYES: That's not how I read the  
22 statement. The statement -- let me read the statement  
23 again. Oh, you mean on page five, line three and four?

24 MR. MICHAEL KOHN: I don't have the document  
25 in front of me, but I --

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1 WITNESS REYES: Repeat the question. I want  
2 to make sure --

3 MR. MICHAEL KOHN: Does Mr. Bockhold indicate  
4 in that transcript that there was only one dew point  
5 instrument on site at that time?

6 WITNESS REYES: Yes.

7 MR. MICHAEL KOHN: And would it surprise you  
8 that there was more than one dew point instrument at the  
9 plant site at that time?

10 WITNESS REYES: No, but it wouldn't surprise  
11 me that he would make the statement. I don't know what  
12 the status of the other instruments were. They may have  
13 not been in calibration frequency, they may have not been  
14 of the accuracy needed, Staff may not --

15 MR. MICHAEL KOHN: If a second -- if they used  
16 one dew point instrument to take high readings on March  
17 29, and thereafter used a second site calibrated M&TE  
18 instrument, do you believe that Georgia Power --

19 WITNESS REYES: To do what? I don't  
20 understand.

21 MR. MICHAEL KOHN: To take additional dew  
22 point readings.

23 CHAIRMAN BLOCH: Mr. Kohn, just a second. You  
24 said site calibrated. Do you mean that?

25 MR. MICHAEL KOHN: Let me rephrase it. A

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1 second dew point instrument verified by the M&TE program  
2 to be within calibration, and that second instrument took  
3 high dew point readings, do you believe NRC should have  
4 been timely advised of the second instrument's high dew  
5 point readings?

6 WITNESS REYLS: I don't know the answer to --  
7 I don't know what the dialogue was between the IIT.  
8 Obviously there were some discussions later, but I don't  
9 know what the understanding was between the NRC and GPC on  
10 the update of the information.

11 MR. MICHAEL KOHN: So you're not in a position  
12 then to judge whether the communications between Georgia  
13 Power and NRC were complete and fully accurate with  
14 respect to dew point measurements, are you?

15 WITNESS REYES: Based on the documents that I  
16 was just asked to read, I can't conclude that there were  
17 many discussions on dew point, and the March 29th readings  
18 were discussed before the restart decision. That's what I  
19 had just read.

20 MR. MICHAEL KOHN: And do you know if NRC was  
21 told of all the reasons as to why the March 29 high dew  
22 point readings were believed to be inaccurate?

23 WITNESS REYES: I don't know.

24 MR. MICHAEL KOHN: I have no further  
25 questions.

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1 CHAIRMAN BLOCH: Mr. Blake?

2 MR. BLAKE: None.

3 MS. YOUNG: No questions.

4 CHAIRMAN BLOCH: It's my pleasure to thank you  
5 for being witnesses here and to excuse you.

6 WITNESS ZIMMERMAN: Thank you.

7 (The witnesses were excused.)

8 CHAIRMAN BLOCH: Mr. Kohn, I believe you had  
9 some procedural matters?

10 MR. MICHAEL KOHN: Yes, Your Honor.

11 MR. BLAKE: Can I go first? I probably have  
12 less.

13 MR. MICHAEL KOHN: I asked first, but --

14 MR. BLAKE: Okay, go ahead.

15 MR. MICHAEL KOHN: -- if you want to go -- I  
16 don't think it really matters.

17 MR. BLAKE: We have several items, each of  
18 which has been previously identified on the record. And I  
19 just want to enumerate where we stand on those. And the  
20 Board may have to make some decisions about these.

21 First, there is the Duncan Affidavit which  
22 distributes in response to the Board's request information  
23 about the Alnor and its possible use or any as found data  
24 that we had on it. And I wanted to distribute that before  
25 I moved it into evidence, but I will move that into

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1 evidence today.

2 MR. MICHAEL KOHN: That's one of Intervenor's  
3 issues also.

4 MR. BLAKE: Okay. Second and third are  
5 Hanfinger and Frederick affidavits which I'd earlier  
6 referred to. These both happen to be in response to Board  
7 request, and we can distribute those today. And they can  
8 be made a part of the record if the Board desires.

9 MR. MICHAEL KOHN: Have they been previously  
10 distributed?

11 MR. BLAKE: No. And today, as I've told you  
12 the last time in the report, that we were trying to  
13 complete them. And as I understand, they've been  
14 completed today. We have a response to an interrogatory  
15 that we -- interrogatory response which really was your I  
16 thought creative way around an attorney-client problem,  
17 Judge Bloch.

18 It came up during Mr. Webb's testimony and had  
19 to do with the business of on the shelf and why was the  
20 June 29 letter as late as it was -- revision to the LER.  
21 And we can distribute that today. I think other than the  
22 disputes with regard to the Intervenor's exhibits that's  
23 really all we have in terms of being able to complete the  
24 record, and we're prepared to do all of those.

25 CHAIRMAN BLOCH: I think first we should mark

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1 them and then find out how Intervenor responds.

2 MR. BLAKE: I'll just distribute them. I  
3 suspect he ought to have at least a break and what not for  
4 later. I'll distribute them and then we can mark them any  
5 time after everybody has them in front of them so they  
6 know what --

7 CHAIRMAN BLOCH: Okay. Mr. Kohn, what matters  
8 have you got?

9 MR. MICHAEL KOHN: Intervenor cannot rest his  
10 case until a tape 99B, Intervenor's Exhibit 247, is  
11 entered into the record.

12 MR. BLAKE: Or at least a decision is made  
13 about it.

14 MR. MICHAEL KOHN: Yes. Well, we may need  
15 oral testimony regardless. I'm just saying that's an  
16 issue that we have to look at. The second is --

17 CHAIRMAN BLOCH: Well, are we going to get  
18 positions on these things so that we can dispose of them  
19 or --

20 MS. YOUNG: This is about 247?

21 MR. MICHAEL KOHN: Yes.

22 MS. YOUNG: I thought that you had asked Mr.  
23 Kohn for a written motion, and I assume we give positions  
24 in response to the written motion.

25 CHAIRMAN BLOCH: Okay, so we'll do that by

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1 written motion.

2 MR. MICHAEL KOHN: Yeah, and we will file that  
3 motion on Monday if that's acceptable. Second --

4 CHAIRMAN BLOCH: Yes, it is.

5 MR. MICHAEL KOHN: -- concerns a motion  
6 Intervenor's to file concerning the denial of Georgia  
7 Power's response to the request for admissions. And we  
8 anticipate filing that motion on Monday as well. The  
9 third issue concerns the Duncan Affidavit and the recent  
10 response to discovery concerning the Alnor.

11 Intervenor requests two weeks to carefully  
12 consider the information that has been given. And within  
13 that time period, issue our response as to the  
14 admissibility of the affidavit and what additional  
15 documentation should also be placed into the record and  
16 what additional witnesses may have to be called to  
17 testify, in particular whether Intervenor needs Mr. Duncan  
18 live to appear and other witnesses to explain the scope of  
19 the affidavit.

20 The next issue concerns --

21 CHAIRMAN BLOCH: Is there any objection to the  
22 granting of the two weeks to do that?

23 MR. BLAKE: Yeah. I thought you were just  
24 hearing a recitation of what's on the table.

25 CHAIRMAN BLOCH: Well, maybe it would be

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1 better to act.

2 MR. BLAKE: You want to hear arguments on each  
3 of these as we go?

4 CHAIRMAN BLOCH: Well, why don't we just  
5 announce them now and after the break we'll act on each of  
6 them.

7 MR. MICHAEL KOHN: All right. I'll continue.  
8 That's one we have to come back to.

9 MR. BLAKE: We're going to come back to the  
10 admissions one too.

11 MR. MICHAEL KOHN: The next is agreement  
12 between the parties on a list of exhibits that are  
13 outstanding -- Intervenor's exhibits outstanding that must  
14 be moved into evidence. And to the extent additional  
15 agreements cannot be reached, there was going to be a need  
16 probably for a substantial portion of a day for argument  
17 on a lot of exhibits.

18 There is currently --

19 CHAIRMAN BLOCH: How long -- how much time  
20 from now can that take place? Can it take place early  
21 next week?

22 MR. MICHAEL KOHN: Yes, it can, Your Honor.  
23 The list that Mary Jane gave me before she fell ill has 28  
24 exhibits on it. And I think there's probably about ten of  
25 them we should be able to resolve between the parties

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1 today, I suspect. And then we may have to come back and  
2 look at these. And unfortunately, I need Mary Jane's  
3 assistance, and she has committed to coming in over the  
4 weekend or on Monday to help me.

5           That's an outstanding issue with exhibits.  
6 The next is the Glenn deposition and stipulation agreement  
7 which we haven't finalized at this time. And I believe  
8 the parties should be able to finalize that by Monday. Or  
9 if we're still in -- filing the motions with respect to  
10 tape 99B and the request for admissions, we may not be  
11 able to discuss it with Georgia Power until Tuesday.

12           But I suspect by Tuesday of next week an  
13 agreement as to that outstanding issue should be in  
14 writing and submittable to the Board. The next issue  
15 concerns whether the production of two MWO's -- these  
16 MWO's are 1-90-01517 and 1-90-01518. Both of these MWO's  
17 are referred to in the Traveler admitted through Mr.  
18 Skinner and the traveler associate with the Alnor,  
19 Intervenor's Exhibit 279.

20           The MWO's concerned the use of the Alnor in  
21 the April 4 time frame on instrument air and may contain  
22 information relevant to determining whether the Alnor was  
23 accurate or defective. And we think that the record  
24 should be remained opened with respect to these MWO's and  
25 whether there is information in those MWO's which the

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1 Board should consider.

2           The next issue, of course, is the Ester Dixon  
3 notes. And I suspect the record would remain open with  
4 respect to that issue until the Commission issues a  
5 ruling. I believe Intervenor has to file his brief  
6 tomorrow, and we will be -- most of tomorrow, we  
7 anticipate being taken up with getting that brief response  
8 out.

9           And the last is --

10           CHAIRMAN BLOCH: So your position is that  
11 until that's ruled on, we can't require the filing of  
12 findings?

13           MR. MICHAEL KOHN: No, we're not making that -  
14 - I don't think we need to hold that up, Your Honor. I  
15 think that we may require additional time for findings on  
16 issues related to those notes. There's certainly a lot  
17 the parties can be working on.

18           CHAIRMAN BLOCH: In other words, if the  
19 Commission were to uphold the appeal, then we might have  
20 to decide something later instead of refuse the appeal?

21           MR. MICHAEL KOHN: That's correct. In other  
22 words, if -- it may simply be that the notes themselves  
23 are sufficient for Intervenor, and we would just request  
24 to cite to them, or Georgia Power may want to --

25           CHAIRMAN BLOCH: Possible open issue, -

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1 don't know that?

2 MR. MICHAEL KOHN: Yes. And the last is based  
3 on Board's questioning, I believe, of Mr. Skinner or the  
4 dew point panel -- I can't recall which, I can't recall  
5 which -- there was some issue with respect to the weather  
6 conditions when dew point measurements were taken. And  
7 intervenor has previously find as his exhibits six whether  
8 data from the National Bureau of Weather -- whatever the  
9 government agency is, and that we would either seek leave  
10 to supplement that as soon as we receive the data, which  
11 we have previously requested -- we're waiting to receive  
12 some additional data -- or I think the Board could take  
13 traditional notice of those findings of the National  
14 Weather Service.

15 So that's another remaining issue.

16 CHAIRMAN BLOCH: I suggested that we could  
17 take administrative notice of an official source of  
18 information on the weather on that day, that's correct.

19 MR. MICHAEL KOHN: Yeah.

20 CHAIRMAN BLOCH: Okay, the parties could  
21 conceivably agree that you've got an official source of  
22 data.

23 MR. MICHAEL KOHN: Yes, and I just wanted to  
24 make sure that parties were alerted that there wasn't  
25 surprise that we were going to submit this in a brief.

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1 But those dates would be, I believe, March 9 and April  
2 6th. We're waiting to see what the --

3 CHAIRMAN BLOCH: You've asked the National  
4 Oceanic and Hemispheric Administration for that data?

5 MR. MICHAEL KOHN: If that is the organization  
6 identified in Intervenor's II-6 --

7 CHAIRMAN BLOCH: We don't know.

8 MR. MICHAEL KOHN: Yeah, it's --

9 CHAIRMAN BLOCH: At any rate, if it were, the  
10 National Weather Service, that's certainly an acceptable  
11 way to go.

12 MR. MICHAEL KOHN: And the second -- two last  
13 items. Intervenor is anticipating filing a motion with  
14 respect to the NRC Staff panel and the issue concerning  
15 experts. And we anticipate filing that early next week.  
16 And the last issue is two documents that Georgia Power has  
17 requested or has not produced with respect to an attorney-  
18 client privilege.

19 When they were producing the corporate  
20 concerns file, Georgia Power indicated that there was two  
21 documents contained in that file that they were  
22 withholding on the basis of attorney-client privilege.  
23 And I guess Intervenor would request that those documents  
24 be reviewed in camera by the Board for determination of  
25 whether the privilege applies.

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1 Or, I think that Georgia Power can also make a  
2 statement as to what these documents are. And based on  
3 the -- if it's conceivable, based on the termination of  
4 the Commission, this issue could be resolved at the same  
5 time. If these documents are within the same frame of  
6 argument. So, that wouldn't require in camera inspection.  
7 But obviously I don't know what the documents are, and I  
8 don't know if Georgia Power can accomplish that.

9 CHAIRMAN BLOCH: We don't have enough  
10 information to know that we would even consider that  
11 within the same realm as the Ester Dixon documents. So  
12 that sounds like it's a subject for discussion between the  
13 parties. You don't know enough to know whether you  
14 disagree yet.

15 MR. MICHAEL KOHN: That is correct. I think  
16 that if we had a discussion with Georgia Power and they  
17 told me what they felt comfortable telling me, it may  
18 indicate to Intervenor that we would withdraw the  
19 request. So that's something we could do during a break.

20 CHAIRMAN BLOCH: Are those all the open  
21 matters to lay in the record?

22 MR. MICHAEL KOHN: Those are all the open  
23 matters that Intervenor is currently aware of, sir.

24 CHAIRMAN BLOCH: Ms. Young?

25 MS. YOUNG: I'm informed there are a number of

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1 tape exhibits which may or may not be on Intervenor's  
2 list. I've misplaced by copy of Intervenor's. There are  
3 at least three tape exhibits that there is a joint agreed  
4 version that probably should be addressed before the  
5 record closes today or whenever the Board rules.

6 Mr. Skinner informs me that he can do an  
7 affidavit on the procedures question that he got this  
8 morning. But due to --

9 CHAIRMAN BLOCH: Calibration, right.

10 MS. YOUNG: Yes. Due to other business and  
11 his leave schedule, he can't do that until October 20th.  
12 And he's been here practically every day, so I'm sure he's  
13 being --

14 CHAIRMAN BLOCH: Is there someone else who is  
15 skilled in the same area who could do it instead? I mean,  
16 he's apparently -- Mr. Skinner's going to looking at  
17 documents maybe for the first time on this issue. So it  
18 wouldn't have to be Mr. Skinner. Well, why don't we  
19 handle that --

20 MS. YOUNG: I'm not sure it's feasible to have  
21 someone else do it.

22 CHAIRMAN BLOCH: All right.

23 MS. YOUNG: That's the problem, because he  
24 testified about a number of matters.

25 CHAIRMAN BLOCH: All right, that's acceptable

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1 to the Board. So right now, we're going to take a break  
2 for the distribution --

3 MS. YOUNG: I wasn't quite finished.

4 CHAIRMAN BLOCH: Oh, I'm sorry. I thought you  
5 were done. Ms. Young?

6 MS. YOUNG: There have been a lot of  
7 references to the approval of restart, and I don't think  
8 we have an exhibit in evidence that indicates the April  
9 12th date. So the Staff proposes as an exhibit, and I've  
10 shared it with opposing counsel.

11 MR. MICHAEL KOHN: Intervenor does not object.  
12 But somehow, as a recollection, that this already is on  
13 the record.

14 MS. YOUNG: Where? We couldn't find it.

15 MR. MICHAEL KOHN: I thought Georgia Power  
16 submitted it, but I might be wrong. So I certainly don't  
17 object to marking it as a Staff Exhibit.

18 MS. YOUNG: Well, it would be one page would  
19 be in the record twice. So, if we could do that. And my  
20 records show we're up to Staff II-76. I'd like this  
21 marked.

22 (Whereupon, the above-referenced  
23 document was marked as Staff Exhibit  
24 II-76 for identification.)

25 CHAIRMAN BLOCH: One page exhibit -- this is

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1 one page?

2 MS. YOUNG: Yeah.

3 CHAIRMAN BLOCH: And the Staff may mark II-  
4 176?

5 MS. YOUNG: No, 76.

6 CHAIRMAN BLOCH: II-76, and it is admitted in  
7 evidence.

8 (Whereupon, the above-referenced  
9 document, previously marked as Staff  
10 Exhibit II-76 for identification,  
11 was received in evidence.)

12 MS. YOUNG: Okay, and it's the April 12, 1990  
13 letter from Stewart Ebnetter to Georgia Power indicating  
14 completion of confirmation of action letter requirements  
15 and approval to restart Unit 1.

16 CHAIRMAN BLOCH: So now -- is there another  
17 matter, Ms. Young?

18 MS. YOUNG: That's it.

19 CHAIRMAN BLOCH: All right. So we'll take a  
20 20 minute recess for the distribution and digest of  
21 materials. And then we'll come back in session.

22 (Whereupon, the proceedings went off the  
23 record from 3:15 p.m. until 3:40 p.m.)

24 CHAIRMAN BLOCH: Shall we work first with the  
25 licensee's paper?

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1 MR. BLAKE: Can we have just a few moments,  
2 Your Honor, until Ms. Young returns.

3 CHAIRMAN BLOCH: Oh. Okay.

4 MR. BLAKE: I would appreciate it. Thank you.

5 CHAIRMAN BLOCH: I think Ms. Young would not  
6 object to that.

7 MR. BLAKE: We didn't have any particular  
8 order, but we've chosen to mark -- we are on the record  
9 now, are we?

10 CHAIRMAN BLOCH: Yes.

11 MR. BLAKE: To mark the interrogatory, the  
12 document, dated December 28th, which is -- September 28th,  
13 excuse me, a two page document entitled, "Georgia Power  
14 Company's response to the Board's interrogatory regarding  
15 revision to LER 90-006," and attached to it an affidavit  
16 of George -- oh, that two page document, the response to  
17 the interrogatories we would have marked as GPC exhibit  
18 II-206.

19 MR. MICHAEL KOHN: I have an objection to even  
20 marking it, Your Honor.

21 MR. BLAKE: It's not a good start.

22 CHAIRMAN BLOCH: You have an objection to  
23 marking it?

24 MR. MICHAEL KOHN: Well.

25 CHAIRMAN BLOCH: The motion to mark is

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1 granted. It should include, however, the affidavit of  
2 Thomas Webb. Isn't that correct?

3 (Whereupon, the document referred to  
4 was marked for identification as  
5 Licensee Exhibit No. II-206.)

6 MR. BLAKE: Yes. Thank you, Judge Bloch.  
7 There is a one page affidavit of Thomas Webb. Thank you.

8 CHAIRMAN BLOCH: All right. Now what is the  
problem about admitting it into evidence?

10 MR. MICHAEL KOHN: There is a lot of problems.  
11 First, on transcript page 13257, lines 13 and 14, what the  
12 Board asks is, "All right. If we already have it, then we  
13 don't need it now," referring to additional information  
14 from Georgia Power, and then on 13258 is when you then ask  
15 them to submit it in the form of an interrogatory  
16 response.

17 If you look at the interrogatory response,  
18 what they say, it is already in the record, but what they  
19 go on to do is now put in testimony through Mr. Webb that  
20 is not on the record, that is totally prejudicial to  
21 intervenor, and therefore, I object to putting this  
22 testimony in from Mr. Webb.

23 He was present at the time, if they wanted to  
24 question him further they were certainly free to do so,  
25 but I don't think the Board was asking for testimony from

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1 Mr. Webb, they were asking Georgia Power to put additional  
2 information that was given --

3 MR. BLAKE: Your Honor, the nature of the  
4 affidavit --

5 CHAIRMAN BLOCH: It seems to me that we don't  
6 gain or lose anything by having it in the record. Do you  
7 care that it is not going to be in the record, Mr. Blake?

8 MR. BLAKE: No. We are trying to be  
9 responsive to the Board.

10 CHAIRMAN BLOCH: All right. So we sustain Mr.  
11 Kohn's objection.

12 MR. BLAKE: The second document is a two page  
13 affidavit of Mr. Frederick that I have marked as GPC  
14 exhibit II-207, and it is sworn to and subscribed by Mr.  
15 Frederick, dated September 28, 1995.

16 (Whereupon, the document referred to  
17 was marked for identification as  
18 Licensee's Exhibit No. II-207.)

19 CHAIRMAN BLOCH: If I recall correctly, the  
20 principal interest of, I think it was Judge Carpenter, was  
21 to know who it was that decided that there should not be a  
22 lock. It doesn't seem to address that.

23 MR. BLAKE: I can't react to that. I thought  
24 we had been responsive to the Board's request.

25 CHAIRMAN BLOCH: It is Judge Carpenter's

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1 memory too, now. Do we have transcript citations?

2 MR. BLAKE: Yes. I think we put it right in  
3 the affidavit. Yes. Based on information and belief, he  
4 has no recollection of who told him that.

5 I am informed that that is his recollection.  
6 If the Board wants more than that, I will have to go back  
7 to Mr. Frederick, and I apologize to the Board.

8 CHAIRMAN BLOCH: Any objection to the  
9 admission of this affidavit?

10 MR. MICHAEL KOHN: Intervenor objects to the  
11 admission of the affidavit.

12 MR. BLAKE: Is there a basis?

13 MR. MICHAEL KOHN: First, I did not have the -  
14 - I would have to discuss this as it impacts on the record  
15 with my client.

16 I cannot do it at this time, and second, I  
17 cannot indicate whether we would need to cross examine Mr.  
18 Frederick based on the content of the affidavit.

19 So we would object at this time. We may  
20 withdraw the objection, but at this time we would have to  
21 object.

22 MS. YOUNG: Did GPC determine that this was  
23 the only time that the Board made the request to find out  
24 information about the record keeping?

25 I thought there was more than one reference.

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1 MR. BLAKE: I can't help you. I thought from  
2 our notes that we were being responsive to what the  
3 Board's request was, and information and belief based on  
4 what I am informed of today, here, I have made the other  
5 representation with regard to the fact that Mr. Frederick  
6 doesn't remember who told him that specifically.

7 MS. YOUNG: And I just recall there being  
8 another Board question trying to find out who, and it may  
9 not have transpired on August 15th, which is cited in the  
10 affidavit.

11 MR. BLAKE: That is possible too. It may be  
12 that Dr. Carpenter's question came at another point.

13 ADMINISTRATIVE JUDGE MURPHY: This citation  
14 doesn't ask for who.

15 MR. BLAKE: It may be that Dr. Carpenter's  
16 question came at a different point, Judge Murphy, that we  
17 have let him down on, and --

18 ADMINISTRATIVE JUDGE MURPHY: This is where we  
19 entered the affidavit.

20 CHAIRMAN BLOCH: In any event, given the  
21 nature of the affidavit, I am inclined to dispose of it  
22 the same way we disposed of the other.

23 It doesn't add much to our record. Is there  
24 any objection to it not being in the record?

25 MR. BLAKE: Certainly not from us. We were

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1 really just trying to be responsive to the Board.

2 CHAIRMAN BLOCH: Mr. Kohn's motion is  
3 sustained.

4 MR. BLAKE: Two for two, Mr. Kohn.

5 ADMINISTRATIVE JUDGE CARPENTER: For the  
6 record, Mr. Blake, I appreciate your efforts.

7 MR. BLAKE: Thank you, sir.

8 CHAIRMAN BLOCH: Now, the Handfinger  
9 affidavit.

10 MR. BLAKE: This is a three page document,  
11 also dated September 28th, 1995, and entitled affidavit --

12 CHAIRMAN BLOCH: Just one second. Oh. Since  
13 there is no objection, we don't even have to have a clear  
14 record. That is okay.

15 I mean, we didn't even mark that one, did we?  
16 We did mark it? Okay.

17 MS. YOUNG: He asked that it be marked. I am  
18 not sure you said granted.

19 CHAIRMAN BLOCH: All right, it may be marked.

20 CHAIRMAN BLOCH: The next one is going to be  
21 marked what?

22 MR. BLAKE: II-208. That is the Handfinger  
23 affidavit, and it is a three page document signed by Mr.  
24 Handfinger on the third page, and this is self-explanatory  
25 in response to, again, a Board request.

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1                   Hopefully we did better on this one than we  
2 did on the other.

3                   (Whereupon, the document referred to  
4 was marked for identification as  
5 Licensee's Exhibit No. II-208.)

6                   MR. MICHAEL KOHN: Intervenor has not had the  
7 time during the break to study this carefully or even look  
8 at the transcript cites. So I am unprepared to respond to  
9 this one at this point, Your Honor.

10                  CHAIRMAN BLOCH: We will admit it  
11 provisionally, subject to a written motion to strike.

12                  MR. MICHAEL KOHN: Your Honor, I would like,  
13 then, a brief opportunity because it is a lot easier to  
14 review it. I see the transcript cites.

15                  It is much more difficult filing a motion to  
16 strike than it is --

17                  CHAIRMAN BLOCH: We will see if we can handle  
18 this before we are gone today. We will admit it  
19 provisionally and see if there is time to handle it  
20 orally. Mr. Kohn, your matters.

21                  (Whereupon, the document marked for  
22 identification as Licensee's Exhibit  
23 No. II-208, was received in  
24 evidence.)

25                  MR. BLAKE: The other one I think is a joint

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1 matter, and that is the Duncan affidavit. That is the  
2 only other one that we have distributed and offered.

3 The Duncan affidavit, again, was we believe,  
4 responsive to the Board following the ex parte in camera  
5 sessions.

6 The Board asked us two questions: One, to go  
7 back and check on discovery, and we have responded to  
8 that; and the other was check on any as found, and this we  
9 believe to be responsive to that, and in reviewing the  
10 documents, Mr. Duncan, who was M&TE at that point in time,  
11 also has provided a correction to his prior testimony in  
12 view of this additional documentation, which he reviewed,  
13 and that is the Duncan affidavit.

14 It already has been marked and identified with  
15 a number.

16 CHAIRMAN BLOCH: So that if I admit it I have  
17 another number?

18 MR. BLAKE: Yes. I do. Yes, sir, but it is  
19 GPC's II-201.

20 MR. MICHAEL KOHN: Intervenor strenuously  
21 objections to the admission of that document. We believe,  
22 first, that Mr. Duncan's testimony in that affidavit  
23 clearly indicates that he is testifying about what Alnor  
24 documentation means when he is not a representative --  
25 Alnor has apparently not ever seen this documentation

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1 before, and second, he testifies that based on his --  
2 based on documents shown him by Georgia Power counsel, he  
3 is changing his testimony.

4 I think that there may be additional documents  
5 we may want to show Mr. Duncan to try to refresh his  
6 recollection that have not been shown to the witness, and  
7 furthermore, there are still outstanding issues with  
8 respect to the Alnor, which may require Mr. Duncan to  
9 appear. At a minimum at this point we would request that  
10 Mr. Duncan appear so we could cross-examine him on the  
11 basis of that affidavit at this point, but we strenuously  
12 object to its admission at this point into the record.

13 CHAIRMAN BLOCH: We would consider additional  
14 discovery or calling of a witness, but this document is  
15 essential for the completeness of our record, and so the  
16 only question is whether additional discovery should be  
17 called for.

18 MR. BLAKE: I don't know, but that seems to me  
19 to be quite a separate item from the determination on this  
20 document.

21 We ought to be able to rule. With regard to  
22 additional discovery on this topic as a general matter,  
23 there has been a document request for additional discovery  
24 filed, we have on our own, and without request, provided  
25 what we believed to be documentation related to this

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1 event, we have distributed it to everybody and we have  
2 also responded to the discovery request. If there are more  
3 requests coming, certainly we will respond to those either  
4 by way of rejection if we think that is the --

5 CHAIRMAN BLOCH: Well, the only reason for  
6 even mentioning additional discovery, and I don't know  
7 whether we will approve it, but obviously it is an  
8 important document, and it came quite late in the case, it  
9 was a surprise to us, and certainly its favorable to  
10 Georgia Power's case, and so, if there is a need to  
11 further examine what the significance is we would consider  
12 further discovery.

13 MR. BLAKE: I understand, and that may, in  
14 fact, provide them the good cause that they want for  
15 whatever the additional discovery requests are.

16 CHAIRMAN BLOCH: Does staff want to comment on  
17 the admissability of this? All right, so we will admit,  
18 in the interest of an adequate record, we will admit the  
19 affidavit, GPC exhibit 201.

20 (Whereupon, the document was marked  
21 for identification as Licensee's  
22 Exhibit No. II-201, and was received  
23 in evidence.)

24 CHAIRMAN BLOCH: Any further rulings for  
25 Georgia Power?

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1 MR. BLAKE: No. I think that takes care of  
2 what we needed in order to complete the record, at least  
3 get rulings on it.

4 CHAIRMAN BLOCH: Mr. Kohn.

5 MR. MICHAEL KOHN: I'll go over my list.

6 Intervenor will be filing a motion with respect to --

7 CHAIRMAN BLOCH: Okay. You don't have to --  
8 if you have stated already on the record that you are  
9 going to be filing motions we can just -- unless there is  
10 an objection as to the timing.

11 There is one of them you wanted two weeks for.  
12 Is that right?

13 MR. MICHAEL KOHN: That was on the Duncan  
14 affidavit, and looking over the record, and formulating  
15 how we wanted to respond to the Duncan affidavit.

16 CHAIRMAN BLOCH: Let the record reflect that  
17 Judge Carpenter is leaving at this point.

18 Is there an objection to two weeks for that  
19 effort?

20 MR. BLAKE: I have an objection to the two  
21 weeks only because -- we haven't yet talked about whether  
22 or not the record is going to be closed, and what the  
23 timing might be for findings.

24 I think the parties have an agreed-to schedule  
25 on findings, and of course, the longer it is put off, and

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1 the prospect of something more coming in or needing to be  
2 taken into consideration in those findings, the tougher it  
3 is, Judge Bloch.

4 CHAIRMAN BLOCH: I would like to set seven  
5 days for that, and if there is good cause for further  
6 time, you can file it on the seventh day.

7 So that would be next Thursday by close of  
8 business. Let's call that around 3:30.

9 ADMINISTRATIVE JUDGE MURPHY: That is October  
10 5th.

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

12 CHAIRMAN BLOCH: So other than that, I don't  
13 think there was any problem. The other things you were  
14 going to be doing next week anyway.

15 Is there any other matter, other than things  
16 you are going to file?

17 MR. MICHAEL KOHN: Yes. There was. With  
18 respect to the MWOs for the Alnor that were taken on  
19 instrument error, we were requesting that those documents  
20 be produced.

21 CHAIRMAN BLOCH: Georgia Power's response on  
22 that?

23 MR. BLAKE: This is a discovery response which  
24 is prompted by the traveler, which referred to these.

25 The idea that -- and it comes quite late --

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1 the idea that intervenor could have asked for  
2 documentation related to the use of the Alnor device on  
3 the instrument air system is hardly new.

4           You, yourself, have asked a number of  
5 questions over the months of these proceedings about when  
6 was this instrument used in other settings? How do we  
7 know if it wasn't all right in the diesel air system, that  
8 it was all right in the other one?

9           This is not something new, Judge Bloch.

10           CHAIRMAN BLOCH: Let me just ask. Isn't there  
11 a use on the same day that you are asking about instrument  
12 air -- that is, already a use on control air?

13           MR. MICHAEL KOHN: Yes.

14           CHAIRMAN BLOCH: And so, isn't this other just  
15 cumulative? Why do you need it?

16           MR. MICHAEL KOHN: What is contained in the  
17 MWO is also, can be, very enlightening.

18           So we don't know what is in these particular  
19 MWOs, and with respect to discovery and obtaining specific  
20 MWOs, I think intervenor did request that, and it was made  
21 clear that Georgia Power was objecting to producing MWOs,  
22 and it would be, I think it would not be intervenor's  
23 methodology then, to go forward and file additional  
24 discovery asking for MWOs, when it has already been ruled  
25 by the Board that they didn't have to produce MWOs.

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1           So I think that there is cause for these at  
2 this point, and also based on the importance of the --

3           CHAIRMAN BLOCH: I think that issue has been  
4 argued before. It strikes me that we didn't rule that you  
5 didn't have to produce MWOs.

6           It must have been a particular request that we  
7 considered not relevant.

8           MR. MICHAEL KOHN: I would have to look at  
9 that. I think it was in our seventh response to  
10 interrogatories when we were asking when out of  
11 specification dew points were obtained, and I think we  
12 covered the time period.

13           I can't say off the top of my head if we  
14 limited it to diesel generator readings or just any out of  
15 specifications reading at the plant.

16           I couldn't tell you that from the top of my  
17 head, but based on the Board's ruling that they didn't  
18 have to produce MWOs, we wouldn't even file subsequent  
19 requests for MWOs, and I think that the traveler came up.

20           It was introduced in evidence. There is  
21 documentation that maybe should be considered  
22 simultaneously with it, and again it is not something that  
23 we can say that there is anything in these MWOs that would  
24 require submission into the record, but we would like an  
25 opportunity to review them.

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1 MR. BLAKE: I think it is just another  
2 document request related to the Alnor and ought to be  
3 included in any additional written document requests that  
4 they make related to this area; and I would ask the Board  
5 to take into consideration when determining whether or not  
6 they ought to be provided at this late date.

7 The prospective probity of worth, given Mr.  
8 Skinner's response to Mr. Kohn's question, well, how  
9 instructive would it be?

10 Readings that are received on the air  
11 instrument system, with regard to what you would know  
12 about the reliability of the instrument being used on the  
13 diesel system.

14 He said different pressures, different  
15 temperatures, who knows? That is my characterization, but  
16 I think you ought to probably take a look at that as well  
17 before you rule, Judge Bloch.

18 CHAIRMAN BLOCH: I think it would be useful to  
19 be able to do this in the context of a written motion.

20 MR. MICHAEL KOHN: Okay.

21 CHAIRMAN BLOCH: Is Mr. Blake correct, that  
22 you are anticipating related matters in a written motion  
23 also?

24 MR. MICHAEL KOHN: To the Alnor and related to  
25 Mr. Duncan's affidavit, yes. That whole issue we will

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1 cover in one pleading.

2 CHAIRMAN BLOCH: Okay then, let's just add  
3 that to that.

4 MR. MICHAEL KOHN: Okay, and there was a  
5 discussion, intervenor indicated with respect to the --  
6 the raising of attorney/client privilege to the corporate  
7 concerns file.

8 The parties have not had an opportunity to  
9 discuss that over the break, I don't know if Georgia Power  
10 would like to respond.

11 MR. BLAKE: No. I don't remember the  
12 documents myself but I am informed that the documents are  
13 memoranda which document discussions, and specifically  
14 document discussions on their face between counsel and Mr.  
15 Glenn, and with respect to our prior difference, Judge  
16 Bloch, I don't know for sure.

17 I believe, however, that one of them would  
18 clearly make your test, your test, the more stringent  
19 test, and both would qualify under our view of the world.

20 I don't know for sure about the second. So to  
21 the extent Mr. Glenn's being at the corporate level that  
22 he was, would make a difference to you in your view.

23 CHAIRMAN BLOCH: It is not so much his level,  
24 but that he has a direct personal interest, apparently, in  
25 the development of this case.

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1 He was directly involved in what was going on.

2 MR. BLAKE: That is what I am told both of  
3 them are, are one-page documents describing communications  
4 between counsel and Mr. Glenn.

5 CHAIRMAN BLOCH: Does this satisfy you with  
6 respect to the document of Mr. Glenn?

7 MR. MICHAEL KOHN: I think it would indicate  
8 to intervenor that they may be discoverable.

9 Mr. Glenn is not the subject of any inquiry by  
10 this Board or anyone else that I am ever aware of, on any  
11 issue, and he was the person investigating Mr. Mosbaugh's  
12 allegations, and during the course of that investigation,  
13 if Mr. Glenn, performing a corporate function, found  
14 factual information that he put into a memorandum, it  
15 would not be protected -- that factual information does  
16 not get protected merely because it is then given to  
17 Georgia Power's counsel.

18 CHAIRMAN BLOCH: Our ruling was that if he was  
19 directly involved, and they want to get information from  
20 him so they can give a complete disclosure to the Board,  
21 that there is a need to protect him, so he can be candid  
22 with them.

23 He does have an interest in being correctly  
24 interpreted by the licensing board. That is a different  
25 matter, in my opinion, from the rather -- the ministerial

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1 duties of the secretary.

2 MR. MICHAEL KOHN: Your Honor, I would look at  
3 Mr. Glenn as someone who was performing his corporate  
4 function as the coordinator of the corporate concerns  
5 program.

6 If the document merely contains factual  
7 information uncovered during the course of his  
8 investigation, and those factual information were included  
9 in the corporate concerns file, the fact that it is -- I  
10 don't think you can shield the factual information just by  
11 claiming attorney/client privilege because he uncovered  
12 the factual information during the course of an  
13 investigation that is not covered by attorney/client  
14 privilege.

15 CHAIRMAN BLOCH: The Upjohn case also involved  
16 factual information and pursuant to our ruling in the  
17 Ester Dixon matter, we would deny the discovery of the  
18 Glenn material.

19 I guess there is still a question as to what  
20 that other stuff is. So why don't we leave that as a  
21 matter between the parties at this point, and then if you  
22 like you can file a written motion on that, but this one  
23 is denied, with respect to Mr. Glenn.

24 MR. MICHAEL KOHN: Okay.

25 CHAIRMAN BLOCH: The next matter, Mr. Kohn?

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1 MR. MICHAEL KOHN: I think that was the only  
2 thing we needed to discussed, everything else has  
3 previously been discussed on the record, and --

4 MR. BLAKE: Are you dropping admissions?

5 MR. MICHAEL KOHN: No. You wanted to raise  
6 that.

7 MR. BLAKE: I don't know if that is another  
8 one of those I am trying to expand the scope businesses or  
9 not, but I just -- to the extent admissions are somehow  
10 still up for grabs, we are talking actually about the  
11 denials aspect of the admissions document, not the  
12 admissions themselves anymore.

13 We have moved beyond those. As to these, are  
14 you going to be filing a written motion?

15 MR. MICHAEL KOHN: Yes. It is my  
16 understanding that the Board requested that basically we  
17 put the parties on notice as to what it is about the  
18 denials we wanted to rely upon, so there was no surprise.

19 That is my general recollection at this point.

20 MR. BLAKE: Okay. Then we will wait until we  
21 see a written document to react.

22 MR. MICHAEL KOHN: And I don't know if anyone  
23 has a different recollection.

24 MR. BLAKE: However, I want the Board to  
25 understand that the prior discussions on this topic, and

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1 the offers made by the Board, first to file a reply, was  
2 on August 25th; and then to let us know -- if you want any  
3 of these things in -- let us know what the basis is for  
4 each one that you want in, was September 7th; and to the  
5 extent this request comes now, after the record is closed,  
6 obviously if you allow some of these in, it is real  
7 difficult for us to react to them with whatever additional  
8 evidence we might have wanted to, and you will be seeing  
9 more of that in our responses.

10 CHAIRMAN BLOCH: So we will have a written  
11 motion on this.

12 MR. MICHAEL KOHN: Yes, Your Honor, but I want  
13 to make it clear that at this point, as we talk, the  
14 record is not closed, and that --

15 CHAIRMAN BLOCH: That is correct.

16 MR. MICHAEL KOHN: And that the issue boils  
17 down to if we cannot get in what we wanted from these  
18 admissions, that we would then have to revisit whether we  
19 wanted to recall, whether Georgia Power would have to  
20 reproduce Mr. Ajluni to question him on those areas.

21 I think that is how we left it, if I am not  
22 mistaken.

23 MR. BLAKE: That is why I am raising  
24 timeliness.

25 MR. MICHAEL KOHN: Okay.

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1 CHAIRMAN BLOCH: Anything else?

2 MR. MICHAEL KOHN: The only other issue is  
3 with respect to tape 99 as it relates to intervenor's  
4 rebuttal case.

5 I did mention that, but I wanted to make it  
6 clearer that the admission of tape 99 is part of  
7 intervenor's rebuttal case, irrespective of anything else  
8 that happened at this point, and to the extent that tape  
9 99, 99B, intervenor's 247, is not accepted into the  
10 record, and intervenor will have to present rebuttal case  
11 on this area from Mr. Mosbaugh.

12 I mean, that is something we will address in  
13 our motion, but I didn't want it to be lingering that  
14 there -- as to how we viewed it.

15 I just wanted that on the record.

16 CHAIRMAN BLOCH: Okay. I take it that the  
17 outside deadline for filings on procedural motions should  
18 be next Thursday, which is the --

19 MS. YOUNG: Fifth.

20 CHAIRMAN BLOCH: Fifth. October fifth, at the  
21 close of business, which I interpreted to be 3:30.

22 MR. MICHAEL KOHN: Okay, and if I understand  
23 what you are saying, Your Honor, then all of the motions I  
24 have mentioned, the deadline would be Thursday by 3:30,  
25 and of course, we will try to do it before then.

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1 CHAIRMAN BLOCH: Correct. Most of them you  
2 said you were going to do earlier than that.

3 MR. MICHAEL KOHN: Yes. We are going to try  
4 to get those on Monday.

5 CHAIRMAN BLOCH: Okay. Staff, do you have  
6 matters for us to handle at this point? I know you  
7 mentioned certain things.

8 ADMINISTRATIVE JUDGE MURPHY: Well, wait,  
9 before we finish with Mr. Kohn, I thought there were  
10 exhibits.

11 MR. MICHAEL KOHN: Yes. The parties have not  
12 sat down and relooked at the exhibits, but there should  
13 be, as far as I can tell, about 10 exhibits that should  
14 not be objected to, and we could move in at this point in  
15 the hearing.

16 Georgia Power had asked --

17 CHAIRMAN BLOCH: Is that correct? Is there an  
18 agreement to let in 10 exhibits?

19 MR. MICHAEL KOHN: Georgia Power had asked  
20 intervenor to identify where in the record certain  
21 exhibits were discussed that were on our joint  
22 stipulation, and they were objecting to putting the joint  
23 stipulation exhibits in that were not discussed on the  
24 record, and for a good portion of them we now have record  
25 cites.

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1                   That should satisfy Georgia Power's objection,  
2 therefore we --

3                   CHAIRMAN BLOCH: Have they seen the record  
4 cites?

5                   MR. MICHAEL KOHN: No. We haven't had the  
6 opportunity to discuss it.

7                   CHAIRMAN BLOCH: All right. So there is no  
8 agreement on them right now?

9                   MR. MICHAEL KOHN: That's correct.

10                  CHAIRMAN BLOCH: And what about the other 20?

11                  MR. MICHAEL KOHN: Those are just -- there is  
12 no agreement as to whether they are -- what the scope is  
13 or --

14                  CHAIRMAN BLOCH: Is that also a written motion  
15 by next Thursday?

16                  MR. MICHAEL KOHN: No. These exhibits are  
17 something the parties have agreed to discuss, and after  
18 our discussions end the remaining documents would then be  
19 subject to a motion or oral argument on the exhibits.

20                  CHAIRMAN BLOCH: You are suggesting you might  
21 need more time than next Thursday on that?

22                  MR. MICHAEL KOHN: Yes.

23                  CHAIRMAN BLOCH: How about the following  
24 Monday?

25                  MR. BLAKE: We think we are prepared to

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1 discuss all of them.

2 CHAIRMAN BLOCH: Prepared to discuss them all  
3 now?

4 MR. BLAKE: Yes, to the extent that he has  
5 transcript references which cure our problems. We would  
6 like to know that.

7 CHAIRMAN BLOCH: Is staff prepared also?

8 MS. YOUNG: Fine. Monday is a holiday.

9 CHAIRMAN BLOCH: Well, why don't we do that  
10 off the record instead of on.

11 MR. MICHAEL KOHN: We can certainly resolve a  
12 lot of them I think, today.

13 What would remain, the big problem is Mary  
14 Jane is -- this is her responsibility, and I can't even --  
15 I don't necessarily know what is the -- particularly with  
16 respect to tape transcripts. They are --

17 CHAIRMAN BLOCH: What do you propose?

18 MR. MICHAEL KOHN: If the parties would -- I  
19 propose that the parties discuss it, and to the extent  
20 that we reach an agreement, I think that we can have a  
21 conference call and put into the record intervenor's  
22 exhibits that we agree to, and then we can even argue it  
23 at that point or set a date for hearing, but I think that  
24 there is a substantial number of additional ones that we  
25 are going to reach an agreement on.

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1 MR. BLAKE: Why don't we take a break and see  
2 what we report back to you, Judge Bloch, if you can give  
3 us until 4:30 to see how many of these we can get out of  
4 here.

5 CHAIRMAN BLOCH: Should we do that or should  
6 be try to set the schedule for findings first?

7 MR. BLAKE: We can do that. Either way.

8 CHAIRMAN BLOCH: Staff has some matters too,  
9 before we --

10 MR. HULL: Well I think a lot of the matters  
11 that I would discuss, well, all of the matters I am going  
12 to be discussing regard tape transcripts, and some of them  
13 are involved with the problem that Mr. Kohn just  
14 identified about, you know, Mary Jane not being here, and  
15 him not knowing enough to know whether he can agree to  
16 certain exhibits.

17 CHAIRMAN BLOCH: So what would you propose?

18 MR. HULL: Well, I do have some exhibits, tape  
19 transcript exhibits, which I would like to move into  
20 evidence now, which don't fall into the category of  
21 exhibits that Mr. Kohn was referencing.

22 CHAIRMAN BLOCH: Let's identify those.

23 MR. HULL: All right, the first one I would  
24 like to have marked as staff exhibit II-67.

25 This is a transcript of tape 246. It is the

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1 GPC staff alternate version of intervenor exhibit 76A.

2 The transcript is dated August 13, 1990. Your  
3 Honor, this was one of the tape exhibits that was put into  
4 the Board notebook.

5 So the Board already has a copy of this in its  
6 notebook, but I don't know if you would need other copies  
7 at this point or not.

8 MR. MICHAEL KOHN: I am -- II-76?

9 MR. HULL: I have asked that this document be  
10 marked as staff exhibit II-67. It is our version of your  
11 exhibit 76A.

12 MR. MICHAEL KOHN: Thank you.

13 CHAIRMAN BLOCH: The motion to mark is  
14 granted.

15 (Whereupon, the document referred to  
16 was marked for identification as  
17 Staff's Exhibit No. II-67.)

18 MR. MICHAEL KOHN: Your Honor, I guess this is  
19 -- this portion of the tape, excuse me, let me rephrase my  
20 statement.

21 With respect to tape 246, Georgia Power and I  
22 believe, staff, are seeking to put in a portion of the  
23 transcript of that tape that is not -- was not within  
24 intervenor's 76A, and I think you are really looking at  
25 the same objection as it was -- the basis of the objection.

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1 with respect to tape 99, where we wanted to put another  
2 portion of tape 99 in, but because two portions of tape 99  
3 are already in, directly concerning the issue in  
4 intervenor's II-247, and we wanted to include an  
5 additional portion of that tape for inclusiveness and the  
6 record, and what you have here is NRC attempting to do the  
7 same thing.

8           Now, it has been intervenor's understanding  
9 from this proceeding that that was the process we were  
10 using, that there was not an objection to putting in  
11 additional portions of a transcript that ought to be  
12 considered with the other portions.

13           So I wouldn't object, except for the fact that  
14 an objection has been raised which is prohibiting  
15 intervenor, at this point, from doing the same thing.

16           If the parties can reach an agreement that  
17 that is the understanding that we had, I certainly have no  
18 objection.

19           CHAIRMAN BLOCH: Counsel asks for reciprocity  
20 with respect to tape 99. Is there anything to that  
21 argument?

22           MR. BLAKE: Not much.

23           MS. YOUNG: Not here.

24           MR. HULL: Your Honor, this particular tape  
25 transcript has nothing to do with rebuttal.

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1 I think Mr. Kohn is referring to tape 99B,  
2 which is his exhibit II-47, but this one that I am talking  
3 about has nothing to do with the rebuttal case.

4 MR. BLAKE: We are talking about adding a  
5 little bit to the very excerpt which they put in as an  
6 exhibit, and we are just talking about putting in another  
7 portion of the tape.

8 MR. MICHAEL KOHN: With respect to tape 99,  
9 intervenor submitted a portion, Georgia Power then  
10 transcribed an additional portion, submitted it in their  
11 rebuttal case with Mr. Hairston, and now intervenor, in  
12 rebutting that, wanted to transcribe an additional,  
13 subsequent, portion of tape 99 and include it.

14 That is the whole issue on tape 99, and I  
15 think it is no different than intervenor's exhibit of tape  
16 76A.

17 They want an earlier portion of it in to put  
18 it into perspective, and we don't object to doing that,  
19 but we do want reciprocity.

20 MR. HULL: Your Honor, let me point out that  
21 on staff's exhibit 67, it is on the same side of the tape  
22 as intervenor's exhibit 76A.

23 Whereas the tape 99B is on the other side of  
24 the tape, and we do want this extra portion in for  
25 context. I am talking now about staff II-67.

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1 MR. MICHAEL KOHN: Well, I don't understand  
2 the side of a tape. A tape is a tape.

3 CHAIRMAN BLOCH: I don't understand why we are  
4 caring whether it is on one side of the tape or another.

5 If it's contexted to interpret other  
6 documents, it seems to me the principal is the same.

7 MR. HULL: The problem I guess, Your Honor, is  
8 you are not sure how much time elapses between sides A and  
9 B of any particular tape.

10 Whereas on this tape it is contiguous with  
11 what is already in evidence.

12 MR. BLAKE: Judge Bloch, one of them is  
13 context and is contiguous. The other is different people  
14 at a different portion, which happens to be on the same  
15 tape.

16 I don't care which side, I don't even care if  
17 it is on the same side. One is trying to be used as  
18 rebuttal. The other one is trying to put it in context,  
19 inconsistent with the Board's rulings throughout.

20 MR. MICHAEL KOHN: It is the same subject  
21 matter, the same -- Mr. Mosbaugh was participant on all of  
22 the conversations with respect to tape 99.

23 There is no differentiation, and with respect  
24 to intervenor's version of tape 99B, we state the exact  
25 time sequence with respect to the earlier communication.

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1 It is on it, and we have no objection to  
2 Georgia Power and NRC staff submitting their own version  
3 of tape 99B, and to the extent that the entire tape should  
4 be transcribed, we don't have an objection to doing that  
5 either, to put everything in complete context; but it is  
6 part of the same subject matter and ought to be considered  
7 simultaneously by the Board when reviewing tape 99.

8 (Pause.)

9 CHAIRMAN BLOCH: We are prepared to admit  
10 staff exhibit II-67, based on the fact that its contexted  
11 in a different sense than tape 99.

12 It's contexted with the same participants.  
13 The same general time period.

14 If in fact, counsel's representations about  
15 tape 99 are correct, and that it is needed to place other  
16 conversations in context, then our ruling on tape 67  
17 should be helpful to him, but we will defer ruling on 99  
18 because we don't know anything about what it is about.

19 I am sorry, exhibit 99, not tape 99.

20 (Whereupon, the document marked for  
21 identification as Staff's Exhibit  
22 No. II-67, was received in  
23 evidence.)

24 MR. MICHAEL KOHN: No. It is tape 99.

25 CHAIRMAN BLOCH: We just admitted staff

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1 exhibit 67. Is that right? II-67. Yes.

2 MS. YOUNG: You need to look at the document,  
3 Judge Bloch.

4 CHAIRMAN BLOCH: Yes. Okay. Staff II-67 is  
5 tape 246. Is that right?

6 MR. HULL: That is correct, Your Honor.

7 CHAIRMAN BLOCH: Let's continue. Is there  
8 another matter for the staff?

9 MR. HULL: Several pages, Your Honor.

10 CHAIRMAN BLOCH: Are they all following the  
11 same context ruling as tape 246?

12 MR. HULL: There are a couple of different  
13 sets. Let me get to them, Your Honor.

14 The next one the staff would like marked for  
15 identification as intervenor exhibit 19A, which is a joint  
16 version of intervenor's exhibit 19, which has already been  
17 admitted in evidence.

18 This is a transcript excerpt from tape 25.  
19 The date is March 30, 1990. I would like that marked for  
20 identification.

21 CHAIRMAN BLOCH: And how many additional --  
22 how many pages are you talking about?

23 MR. HULL: I believe this one adds some  
24 additional material for context purposes, Your Honor, and  
25 may also have some word differences from intervenor's

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1 version.

2 CHAIRMAN BLOCH: And how many pages does it  
3 consist of?

4 MR. HULL: Four pages.

5 CHAIRMAN BLOCH: It may be marked. Do you  
6 have an objection, Mr. Kohn?

7 (Whereupon, the document referred to  
8 was marked for identification as  
9 Intervenor's Exhibit No. II-19A.)

10 MR. MICHAEL KOHN: The same objection as  
11 before, which is reciprocity.

12 I am not able to determine without comparing  
13 intervenor's exhibit 19 as to how this document fits in,  
14 but certainly, as I indicated, it has been intervenor's  
15 understanding that the parties were free to submit  
16 portions of a tape they believed necessary when one  
17 portion of that tape was introduced.

18 CHAIRMAN BLOCH: So then, it is admitted, and

19 --

20 MR. BLAKE: Judge Bloch --

21 CHAIRMAN BLOCH: Marked as 68. Is that what  
22 you are doing?

23 MR. HULL: No. This one is marked as exhibit  
24 19A. It distinguished that it is an alternate version  
25 from intervenor's exhibit 19.

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1 CHAIRMAN BLOCH: Exhibit 19A is admitted. Mr.  
2 Kohn, if in fact, tape 99 is contexted for other things,  
3 your motion is going to be very simple.

4 (Whereupon, the document marked for  
5 identification as Intervenor's  
6 Exhibit No. II-19A, was received in  
7 evidence.)

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

9 MR. BLAKE: I think that is going to be the  
10 answer to all of these. Isn't it going to be, Michael,  
11 that you are going to allow these in and then to the  
12 extent they bolster your subsequent argument about 99, you  
13 are going to use it in your motion.

14 MR. MICHAEL KOHN: That is correct.

15 MR. BLAKE: That will probably shorten the  
16 process.

17 CHAIRMAN BLOCH: That is admitted in evidence.  
18 Mr. Hull.

19 MR. HULL: Your Honor, the next one I would  
20 like marked as intervenor exhibit 22B-1. Again, this is  
21 the staff.

22 CHAIRMAN BLOCH: Hold on a second. We want to  
23 do it in the right order, which is that we have to get the  
24 document first so that we can put the number on it.

25 MR. MICHAEL KOHN: Your Honor, with respect to

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1 all of these tapes, we have not looked at how far, what  
2 type of context these are in and whether additional  
3 portions of these tapes intervenor would now subsequently  
4 want to include in the record, and I don't know whether  
5 that discussion has actually occurred, because Mary Jane  
6 is the only person who could answer these questions for  
7 me.

8 So I do know that Mary Jane did mention to me  
9 that there was one transcript that we had some  
10 reservations on as to, there may be a need to put some  
11 additional portions of those tapes in.

12 CHAIRMAN BLOCH: So you may reserve and make a  
13 written motion on that subject.

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

15 MR. HULL: And just for clarification, Your  
16 Honor, my notes and records do indicate that that  
17 particular exhibit, the one that was just admitted, was  
18 agreed upon by intervenor, but again, without Mary Jane  
19 being here, Mike may be under a problem in that regard.

20 CHAIRMAN BLOCH: Now, you would like to mark  
21 22B-1?

22 MR. HULL: Yes, Your Honor.

23 CHAIRMAN BLOCH: Consisting of two pages?

24 MR. HULL: Consisting of two pages, Your  
25 Honor. It is an excerpt from tape 89, side A, the date of

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1 May 2, 1990, and intervenor's exhibit 22B is already in  
2 evidence.

3 So this is the alternate version of it.

4 ADMINISTRATIVE JUDGE MURPHY: So you are  
5 marking it as staff exhibit 22B-1?

6 MR. HULL: I have marked it as intervenor  
7 exhibit 22B-1 to indicate it is our alternate version of  
8 the intervenor exhibit.

9 CHAIRMAN BLOCH: Granted and admitted.

10 (The document was marked for  
11 identification as Plaintiff's  
12 Exhibit No. 22B-1 and received in  
13 evidence.)

14 MR. HULL: The next one, Your Honor, I have  
15 marked as GPC exhibit -- I would like marked as GPC  
16 exhibit II-120A. It is the staff version of GPC exhibit  
17 II-120, and this is an excerpt from tape 72, date of April  
18 27, 1990.

19 MR. MICHAEL KOHN: I just do have one  
20 question, on the cover page its says transcript, and then  
21 the subsequent pages look like they were re-word  
22 processed.

23 Do I understand that these come from two  
24 separate documents or there was a change in the documents?

25 MR. HULL: There are word differences between

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1 II-120A and II-120. That is why staff is filing this  
2 alternate version.

3 MR. MICHAEL KOHN: Okay.

4 CHAIRMAN BLOCH: And it consists of how many  
5 pages?

6 MR. HULL: I believe it consists of 21 pages,  
7 Your Honor.

8 CHAIRMAN BLOCH: It is a cover page plus 2  
9 through 21. Is that right?

10 MR. HULL: Correct.

11 CHAIRMAN BLOCH: It may be marked, and this is  
12 an alternate translation of an exhibit already admitted.  
13 Is that correct?

14 MR. HULL: That is correct.

15 CHAIRMAN BLOCH: It is admitted.

16 (The document was marked for  
17 identification as Licensee's Exhibit  
18 No. II-120A, and received in  
19 evidence.)

20 CHAIRMAN BLOCH: Transcription, not  
21 translation.

22 MR. HULL: The next one I would like marked  
23 for identification is GPC II-133A. It is the staff's  
24 alternate version of GPC exhibit II-133, which has been  
25 admitted in evidence.

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1 It is a transcript of tape 69, date of April  
2 26, 1990, and again, these and the other exhibits, Your  
3 Honor, are in that tape notebook that was distributed back  
4 in August.

5 CHAIRMAN BLOCH: It is marked and admitted.

6 (The document was marked for  
7 identification as Licensee's Exhibit  
8 No. II-133A, and received in  
9 evidence.)

10 MR. HULL: Now, this next set of exhibits,  
11 Your Honor, are GPC/staff alternate versions of intervenor  
12 tape transcript exhibits which have not yet been admitted  
13 in evidence.

14 So this set, I think, should be treated  
15 somewhat different procedurally. I don't think we should  
16 be admitting an alternate version before the intervenor's  
17 version is admitted.

18 CHAIRMAN BLOCH: Well, is there an agreement  
19 that intervenor's version will also be admitted?

20 MR. HULL: Yes, Your Honor, if he so moves.

21 CHAIRMAN BLOCH: Do you know your position on  
22 this, Mr. Kohn?

23 MR. MICHAEL KOHN: Yes. We would be -- I  
24 think those are part of the exhibits on the list. Am I  
25 correct, Mr. Hull? On intervenor's proposed exhibits to

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1 be admitted?

2 MR. HULL: I don't think, procedurally, we  
3 should be admitting our alternate version until you have  
4 submitted your version of it.

5 So that is the dilemma I am in. I don't think  
6 we -- you have to move yours in first or there is no need  
7 for the alternate version.

8 At least that is my position.

9 MR. MICHAEL KOHN: If you give me the list, I  
10 can probably move more ours in, if they are the same numbering.

11 MR. HULL: Your exhibits would be exhibit 9.  
12 I guess we could do this off the record.

13 CHAIRMAN BLOCH: Let's go off the record.

14 (Whereupon, the proceedings were taken off the  
15 record at 4:27 p.m.)

16 CHAIRMAN BLOCH: As a result of off the record  
17 conversations we have determined that there will be a pre-  
18 hearing conference here at 2:00 p.m. next Friday.

19 I will check on the availability of the  
20 conference room. I think it is available, hearing room;  
21 and on that same day, at 3:30 p.m., we will expect all of  
22 the written motions from intervenor, and we will keep the  
23 record open until the close of the pre-hearing conference  
24 on Friday.

25 Now, we can go about setting the deadlines for

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1 filings. My belief is that we should not consider the  
2 hearing concluded until next Friday.

3 So that if we are going to use the regulatory  
4 deadlines they should be marked for next Friday.

5 Mr. Blake, would you like to lay forth your  
6 understanding of what the regulations suggest?

7 MR. BLAKE: Yes. It is 30 days. It would be  
8 30 days for us from the date --

9 CHAIRMAN BLOCH: What date would that mean you  
10 would have to file by?

11 MR. BLAKE: I don't know. I think the  
12 regulations are quite clear. If you want to go off the  
13 record we can come up with what the calendar dates are.

14 It would take me some time to compute those.

15 CHAIRMAN BLOCH: Judge Murphy believes it is  
16 November 6th.

17 MR. BLAKE: Okay. We agree.

18 CHAIRMAN BLOCH: Now, I would like to point  
19 out that we want filings on these days to be received, to  
20 be received by the Board on those days, by whatever way  
21 that is managed, the Board and parties.

22 That service should be completed by receipt on  
23 the days we are setting.

24 MR. BLAKE: Fair enough.

25 CHAIRMAN BLOCH: Ms. Young, did you have an

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1 objection to that date?

2 MS. YOUNG: I am just seeing here the 31 day  
3 month versus the 30 day month, it will be interesting to  
4 see what they do next.

5 MR. BLAKE: The next one doesn't pose a  
6 problem. It is 10 days from the 6th, which we would  
7 believe to be the 16th for the intervenors.

8 MR. MICHAEL KOHN: Your Honor, intervenor,  
9 based on the complexity of this record, would ask for an  
10 additional 10 days.

11 MR. BLAKE: For gosh sakes, we just had  
12 agreement not more than 10 minutes ago.

13 MR. MICHAEL KOHN: We are looking at a  
14 briefing schedule, and I think that the regulations allow  
15 for the complexity of the record to be taken into account.

16 If you had a hearing that lasted 10 years, you  
17 are not going to file a brief in 30 days, necessarily.

18 If you had a record that lasted one day, you  
19 may be filing it a lot sooner. I don't think it is  
20 unreasonable --

21 CHAIRMAN BLOCH: Based on intervenor's request  
22 we will give him to the 22nd, and then the next date.

23 MR. BLAKE: We would just like, if it is going  
24 to be scheduled out, we would like the same number of days  
25 for us. We were trying to set it as tightly as possible.

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1 We will put 10 days in between and add the same number of  
2 days for us.

3 MR. MICHAEL KOHN: Your Honor, we were looking  
4 at the 10 days, as I understand it, we are only filing one  
5 brief.

6 So we would have to file our brief in response  
7 to Georgia Power. What we are really looking at those 10  
8 days for was responding to Georgia Power's brief.

9 I don't object to Georgia Power having 10  
10 days, but it doesn't affect our additional need of time.

11 CHAIRMAN BLOCH: You want 10 additional days  
12 for the first filing?

13 MR. BLAKE: Do I want?

14 CHAIRMAN BLOCH: Yes.

15 MR. BLAKE: No.

16 CHAIRMAN BLOCH: What is the extra 10 days  
17 Georgia Power wants?

18 MR. BLAKE: I don't want any extra time except  
19 if they are going to get extra time in the schedule, I  
20 would like the same number of days of extra time in our  
21 schedule.

22 CHAIRMAN BLOCH: Yes.

23 MR. BLAKE: If they want to delay overall. So  
24 I guess it would make ours the 12th rather than the 6th.

25 ADMINISTRATIVE JUDGE MURPHY: Six and 10 is

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1 16. Oh, I see.

2 MR. BLAKE: If you move them from the 16th to  
3 the 22nd, I was suggesting you move us from the 6th to the  
4 12th.

5 CHAIRMAN BLOCH: We added six to their number.

6 MR. BLAKE: That is what I am trying to do to  
7 mine.

8 CHAIRMAN BLOCH: So your due date now is?

9 MR. BLAKE: The 12th happens to be a Sunday,  
10 so it would turn out to be the 13th.

11 CHAIRMAN BLOCH: The 13th, and now Mr. Kohn's  
12 date becomes --

13 ADMINISTRATIVE JUDGE MURPHY: The 29th.

14 CHAIRMAN BLOCH: The 29th.

15 MR. BLAKE: This is not the sort of escalation  
16 I had in mind.

17 ADMINISTRATIVE JUDGE MURPHY: That's what you  
18 just asked for.

19 MR. BLAKE: No. No.

20 ADMINISTRATIVE JUDGE MURPHY: That is how we  
21 understood it.

22 MR. MICHAEL KOHN: He wanted --

23 MR. BLAKE: If you are giving the intervenor -  
24 - the intervenor said we had a very complex record and  
25 they would like some extra time.

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1           They didn't say anything about our findings  
2 and wanting to stretch the time between the two.

3           So I said, they need more time to do the  
4 record, and you give them 10 days more.

5           Then give us 10 days more for the complex  
6 record, and the same level of complication.

7           Don't stretch the distance between the two.

8           MR. MICHAEL KOHN: I think maybe the  
9 miscommunication is that intervenor needs the extra time  
10 because when we file our brief, we also have to be filing  
11 a response to your brief, and I am sure your brief is  
12 going to be rather voluminous, and in order for us to  
13 adequately respond, I know we are going to need that extra  
14 time.

15           MR. BLAKE: That is a totally different  
16 argument.

17           MR. MICHAEL KOHN: Yes. I think you  
18 misunderstood our understanding.

19           CHAIRMAN BLOCH: Let's go off the record and  
20 talk about it.

21           (Whereupon, the proceedings were taken off the  
22 record at 4:37 p.m.)

23           CHAIRMAN BLOCH: As a result of further  
24 discussions about scheduling, the schedule is as follows:  
25 the 6th of November is the filing for Georgia Power

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1 Company; the 22nd for intervenor; December 5th for the  
2 staff; and December 15th for the reply by the -- I guess  
3 it is called the rebuttal. Isn't it? Rebuttal by Georgia  
4 Power.

5 MR. BLAKE: Reply.

6 CHAIRMAN BLOCH: Reply, okay. I would like to  
7 go into recess at this time.

8 MR. MICHAEL KOHN: We are not done, Your  
9 Honor.

10 CHAIRMAN BLOCH: Recess. We are not done. I  
11 just want to introduce Mr. Cotter. We will go into  
12 recess.

13 Judge Cotter has asked to be able to address  
14 us at the conclusion of this lengthy, momentous, hearing  
15 in which we have gained great knowledge of the facility  
16 that we are working in.

17 (Whereupon, a recess was taken at 4:52 p.m.,  
18 to reconvene at 5:05 p.m.)

19 CHAIRMAN BLOCH: I would like to state for the  
20 record that the dates set for filings are dates on which  
21 the documents should be received by the other parties and  
22 by the Board, and the document will not be considered  
23 filed unless it is received on time.

24 In addition, we have decided to provide that  
25 the parties may file corrections to the transcript

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1 simultaneously with their findings.

2           They may, of course, be attached, if they  
3 prefer to do it that way, and we would encourage the  
4 parties to discuss egregious transcript errors with one  
5 another prior to their findings, and to let the Board know  
6 if there are changes in admissions of exhibits.

7           Are there any other matters for the record  
8 today?

9           MR. BLAKE: I would like to officially be  
10 relieved of any further sequestration obligations so that  
11 we are free to consult with any and all witnesses, and any  
12 and all client individuals.

13           CHAIRMAN BLOCH: That is done. There will be  
14 no further sequestration of any witnesses for any purpose.

15           MR. BLAKE: I would like to know what the  
16 timing is for the Board's release of the cross-examination  
17 plans which have been submitted.

18           CHAIRMAN BLOCH. The regulations, I guess we  
19 will release them on Friday. We will bring them to the  
20 hearing.

21           MR. MICHAEL KOHN: Your Honor, intervenor does  
22 not object to the release of the sequestration, but we  
23 would suggest that perhaps with respect to Mr. Duncan and  
24 other persons, Mr. Suthphin and Mr. Hobbs, that that may  
25 not be warranted at this point.

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1 We should wait until whether intervenor  
2 decides that they need to call those witnesses.

3 MR. BLAKE: I don't know exactly what that  
4 means or whether that will prove to be a complication for  
5 us.

6 We will tell Mr. Duncan -- these three  
7 individuals that they are still subject to sequestration,  
8 and if it proves to be a problem I will back, but I take  
9 it that would be only through a date certain?

10 MR. MICHAEL KOHN: Yes. Once the record  
11 closes.

12 CHAIRMAN BLOCH: This is through next Friday.

13 MR. BLAKE: All right.

14 CHAIRMAN BLOCH: So the only three individuals  
15 are Duncan, Suthphin, and --

16 MR. MICHAEL KOHN: Hobbs.

17 CHAIRMAN BLOCH: Hobbs. There being no  
18 further matters, I would like to thank the parties for  
19 their participation, the reporter for his work, and we  
20 will be adjourned until next Friday at 2:00 p.m.

21 (Whereupon, the proceedings were adjourned at  
22 5:10 p.m.)

23  
24  
25

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C E R T I F I C A T E

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: GA POWER CO. ET AL.  
VOGTLE UNITS 1 & 2

Docket Number: 50-424/425-OLA-3

Place of Proceeding: ROCKVILLE, MARYLAND

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

*Scott Dildine*

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SCOTT DILDINE  
Official Reporter  
Neal R. Gross and Co., Inc.

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