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UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION II
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OFFICE OF SECRETARY
OF ENERGY SERVICE

MEMORANDUM TO: James L. Milhoan, Deputy Executive Director
for Nuclear Reactor Regulation
Regional Operations and Research

THRU: *[Signature]* James A. Fitzgerald, Acting Director
Office of Investigations

FROM: William J. McNulty, Field Office Director *[Signature]*
Office of Investigations Field Office, Region II
[Signature] Larry V. Robinson, Senior Investigator
Office of Investigations Field Office, Region II

SUBJECT: NRC OFFICE OF INVESTIGATIONS ANALYSIS AND POSITION ON
GEORGIA POWER COMPANY'S RESPONSE TO ENFORCEMENT ACTION,
VOGTLE ELECTRIC GENERATING PLANT, UNITS 1 AND 2

By direction of your memorandum dated August 4, 1994, submitted herewith is the result of the Office of Investigations (OI) analysis of the Georgia Power Company response to enforcement action (GPC Response), as it pertains to the conclusions in the OI Report of Investigation (ROI), Case No. 2-90-020R.

BASIS FOR ANALYSIS

The GPC Response did not directly address the conclusions contained in the ROI. The Response addressed the violations that were issued as a result of the deliberations of the NRC Vogtle Coordinating Group. Therefore, the documentation and interpretations contained in the GPC Response were somewhat tangential as applied to the OI conclusions.

RESULTS OF ANALYSIS

The OI conclusions, as stated in the ROI, are unchanged following our analysis of the GPC Response. OI believes the preponderance of evidence continues to support the OI conclusions regarding the actions of GPC personnel identified in the ROI and the degree of willfulness associated with those actions. It is noted that NRC Agency conclusions regarding whether or not these actions constitute violations of NRC regulations or requirements falls under the purview of the NRC Office of Enforcement, in conjunction with the Office of General Counsel.

OI disagrees with many of the GPC statements and characterizations in the Response. Because of the indirect application of the NOV Response to the OI conclusions, this analysis will address only the major areas of OI disagreement with issues expressed by GPC in their Response.

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NUCLEAR REGULATORY COMMISSION
Docket No. 50-424/425-OLA-3 EXHIBIT NO. II-271
In the matter of Georgia Power Co. et al., Vogtle Units 1 & 2
 Staff Applicant Intervenor Other
 Identified Received Projected Reporter SD
Date 9/26/95 Witness SKINNER / MATTHEWS / HOOD

The major areas of disagreement are:

1. Page 2, Para. 1, Line 4 of the letter, dated July 31, 1994, from C. K. McCoy to James Lieberman, captioned GEORGIA POWER COMPANY VOGTLE ELECTRIC GENERATING PLANT REPLY TO NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES; EA 93-304 (hereafter, the Transmittal Letter) states:

Intent to comply with NRC rules, regulations or orders is not at issue here; GPC always intends to obey the law.

OI Comment: As it applies to the OI conclusions, intent is a central issue. From the evidence obtained in this case, it cannot be assumed that GPC always intends to obey the law.

2. Page 2, Para. 2, Lines 4-6 of the Transmittal Letter states:

Inaccurate information resulting from personnel error was included in the April 9 presentation to Region II.

OI Comment: This is the cornerstone of the GPC response. GPC claims that the inaccurate diesel start numbers presented to NRC on April 9 were due to innocent personnel error. If NRC focuses on the absolute numbers, and accepts the assertion that a "mistake" by Cash was the cause of the numbers not being precise, the remainder of the GPC claims regarding the April 19 LER, the June 29 Revision to the LER, and the August 30 letter seem to build logically on that foundation.

The basis for the OI conclusions regarding the April 9 diesel start data (both the oral presentation and the letter) is not that the numbers were not exactly correct, but that the numbers presented to NRC by GPC depicted the diesel testing since the March 20 event as being only "successful" testing, with "no failures or problems."

The numbers that were obtained by Cash for Bockhold, regardless of their absolute value, were deliberately ordered by Bockhold not to contain any starts with problems or failures. To present this subset of diesel starts as "DIESEL TESTING" (the heading of the slide in the April 9 presentation) with "no failures or problems" since March 20 (the statement in the April 9 letter) is not innocent personnel error. It is a presentation to NRC of deliberately incomplete data.

If GPC wishes to present only successful test data, it is their responsibility to identify it as such. It should not be presented as representing all the diesel testing between March 20 and April 9. Regardless of what GPC thinks is the extent of NRC knowledge regarding the specifics of VEGP diesel testing between March 20 and April 9, 1990, if GPC presents "DIESEL TESTING," it is required to provide complete and accurate information regarding this testing in any communication to NRC.

3. GPC claims that it has always been Bockhold's understanding, since before the time he first sent Cash to obtain the successful diesel start data, that the data would contain only consecutive successful starts, and that the start count would not begin until after the Calcon switches had all been recalibrated or replaced.

OI Comment: Despite Bockhold's statements to that effect in his 1993 OI interview and in his communications with the NRC IIT prior to April 9, the key issues are: (1) his actions at the time of actually obtaining the data, and (2) how this data was presented to NRC in support of a restart request.

At those critical junctures, the evidence shows that he did not instruct Cash that the successful starts be consecutive, or that they begin after the Calcon switches had been corrected. Based upon his limited instructions to Cash, Bockhold had no legitimate basis to assume or believe that Cash's count of successful starts was consecutive, or that it began after the switches were fixed. Both the April 9 presentation slide and the April 9 letter portrayed this data as being the diesel testing done since the event (the March 20, 1990, Site Area Emergency). Neither of these documents portrayed the data as being a consecutive number of successful starts after the Calcon switches were fixed. Although the NRC assumed the starts to be consecutive, there is no evidence that Bockhold told the NRC that they were, in fact, consecutive.

Both NRC and GPC agree that, although GPC's presentation of diesel testing did not consist of all valid tests, and was not a formal, Reg Guide reliability requalification of the diesels, the data presented on April 9 pertained to a key restart issue, namely a measure of diesel reliability. So, in the gathering and presenting of this key information,... if Bockhold has always thought of these successful starts as being consecutive, and only started after the switches were fixed, why didn't he specifically instruct Cash to that effect? Why didn't he actually tell NRC, on April 9, that the successful starts on his presentation slide were bounded by that criteria? Why didn't the April 9 letter mention anything about those limitations?

GPC would have NRC believe that Cash was of such the same mind as Bockhold that such detailed instructions were unnecessary. OI disagrees. GPC would have NRC believe that the NRC assumption, on April 9, that the starts were consecutive was the only logical assumption, and that it didn't need to be expressly stated in either the presentation or the letter. OI disagrees.

OI notes that Bockhold stated, in his 1993 OI interview, that he knew he had to have a significant number of successful starts for the April 9 presentation, and that if Cash had not come back with enough, Bockhold would have "started the engine a bunch more" before the presentation. It is OI's view that the more logical reason that Bockhold did not instruct Cash to get consecutive successful starts, was that an instruction to

that effect would never increase, but would probably serve to decrease, the number of successful starts obtained by Cash. Instructing Cash to start his count after the switches were fixed would probably further decrease the potential number of successful starts. Bockhold did not want to decrease that number.

It is also OI's view that the more logical reason that Bockhold did not expressly tell NRC, on April 9, that the starts were consecutive was that he knew that he had no real basis for making that statement, and was content to let NRC assume that they were consecutive.

OI has noted that the GPC Response presents testimonial evidence from the VEGP secretary that assisted in the preparation of the slides for the April 9 presentation. This secretary was not interviewed by OI. GPC asserts that Cash had a draft of the slide before he prepared his list of starts, and that this secretary observed Cash making adjustments to the numbers on the draft of the "DIESEL TESTING" slide. Cash's testimony of August 1990 conflicts somewhat with his testimony of June, 1993 regarding his provision of specific numbers to Bockhold for the "DIESEL TESTING" slide. In 1990, when Cash was being interviewed during an inspection, primarily by an inspector, and the issue was presented to him as being a matter of the mere accuracy of an absolute number of successful diesel starts, he said he gave the 18 and 19 numbers to Bockhold. In 1993, when Cash was being interviewed under subpoena, by an investigator, in the conduct of an investigation of a potential deliberate false statement, he did not recall giving any specific numbers to Bockhold, and said that if he had, the numbers would have been greater than 18 and 19. Cash said that he assisted the secretary with only the format of the slide and did not have anything to do with the actual numbers on the slide.

If GPC's characterization of this secretary's testimony is accurate, and the secretary's testimony is the truth, it is logical to conclude that Cash may well have adjusted the "successful start" numbers below the lines under the columns of test descriptions on the slide. This conclusion would be based not solely upon the secretary's testimony, but upon her testimony combined with the testimony of Bockhold, Eckert, and Cash's 1990 testimony.

However, even if Cash returned from his research with numbers greater than 18 and 19, and then adjusted the numbers on the slide to 18 and 19, based upon the numbers in the columns above the line, OI's conclusions regarding Bockhold's presentation of this data to NRC remain unchanged for the previously stated reason that in the limited instruction that Bockhold did give to Cash, he specifically excluded any problem starts.

4. Page 2, Para. 2, lines 11-13 of the Transmittal Letter states:

Concern had been expressed within the organization about the erroneous information on multiple occasions during

period of time, and two opportunities (April 19 and June 29) to identify the error were missed.

OI Comment: The incompleteness and inaccuracy of that information was specifically identified by Mosbaugh and Aufdenkampe to Shipman and Stringfellow on April 19, 1990, prior to the issuance of the April 9, LER. There were failures and problems in the diesel testing since March 20. The opportunity to identify "the error" was not missed. It was identified and covered up in the April 19 LER, and then attributed to false causes in the June 29 LER Revision and the August 30 letter.

The events of April 19, 1990, are the most significant in the series of inaccurate and incomplete statements given to NRC by GPC. It is at this point in time that the Senior Management of GPC has it's best opportunity to correct any possible misconceptions, if in fact they existed, in the minds of NRC regarding whether or not there were any diesel test failures between March 20 and April 9. At the same time, GPC Senior Management could properly resolve the expressed concerns, real or perceived, of Mosbaugh and Aufdenkampe regarding this issue. All that was needed was for someone from GPC to say to NRC something to the effect of: As a result of some expressed concerns from two of our employees, we (GPC) wanted to make sure you (NRC) didn't get the wrong impression from our April 9 presentation and letter that there weren't any diesel test failures between March 20 and April 9. As you may be aware, we had some early failures and problems on the B machine while returning it to service after maintenance, but we've had enough consecutive successful starts since then to convince us of its reliability.

However, GPC had just received approval to restart the plant on April 12, and had just recently ascended, or started the ascent, to full power. Drawing NRC's attention to potential false statements, real or perceived, could again jeopardize restart. So, when McCoy called Brockman on April 19, there is no evidence that he told him about failures or problems after March 20, but rather he told him what the LER was going to say and confirmed that he (Brockman) understood that basis. Certainly Brockman understood that basis. It was a new basis, but Brockman understood it.

Mosbaugh, at that time the Vogtle Acting Assistant General Manager, Plant Support; and Aufdenkampe, the Technical Support Manager; express their concern to Shipman and Stringfellow about what appears to them to be a false statement in the April 9 letter and an impending false statement in the April 19 LER. At this point in time, their concern was not that the 18 and 19 numbers were not absolutely correct. Their concern was that the April 9 letter and the impending LER were saying that there had been no failures or problems since March 20. Mosbaugh specified the diesel test failures that occurred after March 20. Both Shipman and Stringfellow recognized this as a problem and tell Mosbaugh that they will discuss LER issues with Hairston. Since Mosbaugh was a participant

in these conversations, and was taping at the time, the content of these conversations is a matter of record (Tape 57, Exhibit 34).

Shipman, Stringfellow, McCoy, and Hairston did not have any specific recollection of the content of any conversations among themselves, or with Bockhold, regarding these expressed concerns. McCoy recalled Shipman mentioning something about it to him at some point.

The next taped conversation regarding this issue is Tape 58 (Exhibit 36). In this tape, Mosbaugh enters an ongoing conference call with Aufdenkampe, Bockhold, Shipman, McCoy, and Stringfellow specifically identified as participants. Later in this same call, Hairston becomes a participant. During this call, in which the issue of diesel failures is directly, albeit quickly, addressed by Hairston and dismissed by Shipman and McCoy, there is no evidence of any activity toward correcting a possible misconception in the April 9 letter by bringing it to the attention of NRC. The activity is directed toward not repeating, in the April 19 LER, a statement similar to the April 9 statement. So, for some reason unexplained by McCoy in his OI interview, instead of asking Bockhold when he started his count of diesel starts, McCoy seeks confirmation from Bockhold that the count was not started until the completion of the comprehensive control test program. Where did McCoy get that idea? Most logically, from Shipman and/or Stringfellow in the effort to address the "problem" of failures after March 20. Bockhold, of course, confirms his immediate superior's suggested starting point. At this point, Bockhold knows that no one else on that phone call knows what specific criteria, if any, he gave to Cash when he directed Cash to obtain the start count. Bockhold also knows that, in all likelihood, Cash, if questioned at all, will support his (Bockhold's) statements regarding the criteria for the count.

So, without knowing specifically when the "comprehensive control test program" ended, by using that point as the starting point of the diesel start count in the LER, the failures that Mosbaugh and Aufdenkampe were concerned about were eliminated, in all probability, from the count.

So, having that problem solved, the participants move on to deal with the problem of Hairston's question about the "greater than 20" starts that was approved in the draft LER by the Vogtle PRB, based upon the 18 and 19 numbers in the statement in the April 9 letter. Of course, the "greater than 20" was approved by the PRB using March 20 as the starting point of the count, assuming that the count was correct in the April 9 letter, and adding starts that had been accomplished after April 9. Now that the starting point had been changed to some point not specifically known to any of the participants, including Bockhold, the verification of "greater than 20" became more problematic. McCoy and Shipman had a solution to that problem. What were the numbers that Bockhold used in his April 9 presentation to NRC? "We ought to use those numbers." We'll say "at least" that many numbers. Bockhold chimed in with his support for that idea. So the LER statement, "Subsequent to this test program, DGIA and

DG1B have been started at least 18 times each and no failures or problems have occurred during any of these starts." was created. Stringfellow asked, "Do we want to say... (the above statement)?" And Bockhold said, "Yes, you can say that." It was decided.

At some point, either during or after, the participants decision on the wording of the diesel test statement in the LER, Hairston became a participant on this call. He asked, "So we got the starts...we didn't have no trips?" Shipman started to respond, "No...not..not..." and McCoy interrupted and said, "Let me,...I'll testify to that." At which point Shipman immediately said, "Just disavow. What else have we got Jack?"

The only logical interpretation of those comments is that, at the very least McCoy, if not McCoy, Shipman, and Gockhold had designed LER wording that he (they) thought would eliminate the "trips" that Hairston was asking about, and McCoy did not want to get into a detailed explanation to Hairston about how they did that. So, McCoy volunteered to be the one that would answer any NRC questions about that issue, thereby protecting Hairston from having any detailed knowledge about how that problem was handled. Shipman advised McCoy to "Just disavow." That probably meant for McCoy to disavow any personal knowledge of the trips after March 20, but it could also have meant to disavow the fact that there were any trips after the completion of the comprehensive control test program. All McCoy's subsequent phone call to Brockman did was to tell Brockman what was going to be said in the LER, and the basis for it. The call did not address "trips" after March 20, or that there was the possibility of an "inaccurate" statement in the April 9 letter.

This is the context of the GPC failure to identify "the error" on April 19.

5. Page 3, Last Para., Lines 1-4 of the Transmittal Letter states:

GPC continues to believe that the absence of a single source document for DG starts and runs, containing timely and correct data, using commonly defined terminology, and reviewed by qualified personnel, was pivotal in the underlying difficulty in providing accurate diesel start data.

OI Comment: With Bockhold's instructions to Cash not to count any starts with significant problems, even if an updated diesel start log would have been available, inaccurate and incomplete "DIESEL TESTING" data would have been presented to NRC. Problem starts and tests were deliberately omitted from the data. A "timely" "correct" "single source document" would not have prevented the deliberate omission of that data. The absolute number of successful starts is not the issue!

6. Page 4, Para. 4, Lines 1-3 of the Transmittal Letter states, regarding Mosbaugh:

Despite opportunities to assure an accurate and complete information flow within GPC and, in turn, to the NRC, he did not do so. He clearly was not open and cooperative with his co-workers about resolving his own concerns.

OI Comment: The GPC efforts to discredit Mosbaugh, and to go so far as to blame him for the issues at hand in this matter are very predictable. After witnessing what Shipman, Stringfellow, Bockhold, McCoy and Hairston did, on April 19, with Mosbaugh's concerns about an apparent false statement in the April 9 letter being repeated in the LER, it is understandable that Mosbaugh was hesitant to continue to confront his management with these concerns.

7. Page 1, Para. 6, Line 1 of the Executive Summary Reply to Notice of Violation; EA 93-304 (hereafter, Summary) states:

GPC denies this violation...

OI Comment: The GPC denial of this violation (Violation B, which pertains to Diesel Air Quality), relates indirectly to the OI conclusion that, during his April 9 presentation to the NRC, Bockhold withheld his knowledge of a recent, out-of-specification dewpoint reading on the Unit 2, A Diesel.

The OI conclusion regarding Bockhold's withholding of bad dewpoint information remains unchanged. However, the GPC evidence that the VEGP Asst. General Manager for Operations (Kitchens) made the NRC IIT leader (Chaffee) aware of that particular dewpoint reading on April 9, just prior to Chaffee's participation, via teleconference, in the GPC April 9 presentation to NRC at Region II, raises legitimate questions, for OGC and Enforcement consideration, regarding the materiality of Bockhold's withholding. This, of course, being dependent upon whether Chaffee was present, via teleconference, at the time GPC was presenting air quality issues in the April 9 presentation.

8. The GPC explanation for their denial of Violation E is unreasonable.

OI Comment: The NRC statement of Violation E correctly characterizes GPC's inaccurate statement, in their letter of August 30, which blames a confusion between successful starts and valid starts as being one of the two causes for the "confusion in the April 9th letter and the original LER..." However, in the NOV Response, GPC seems to be asserting that in their August 30 letter they are not proffering, as a root cause for this "confusion", the claim that there was confusion between successful and valid. OI sees no basis for this assertion. The meaning of the first sentence of the third paragraph of the GPC letter of August 30, 1990, was definitely clouded when the second word in this sentence was changed from

"errors" to "confusion." However, it is clear that GPC was offering two causes for this "confusion." One of the causes offered was that there was confusion between successful and valid. That is inaccurate.

9. GPC claims that the phone call from the Vogtle Project VP to the NRC Section Chief on April 19 clarified the inaccurate information provided on April 9.

OI Comment: There is evidence that this phone call from McCoy to Brockman did not draw Brockman's attention to the possibility of an incomplete or inaccurate statement of diesel starts in the April 9 presentation or letter. The call did not specify that there had been any failures or problems in the diesel starts since March 20.

There is evidence that all McCoy did in this phone call to Brockman was to state the basis for the diesel count that was forthcoming in the LER. Since the LER statement changed the basis for the count as compared to the April 9 letter (regardless of what GPC claims was in the mind of Bockhold), there was no explanation in this phone call of any inaccuracies in the April 9 letter.

10. GPC claims that the April 19 LER statement was:

Fortuitously accurate.

OI Comment: The LER statement was not fortuitously accurate on April 19 or on June 29, 1990. At the time the statement was made there was no specific knowledge by the GPC preparers of that statement, to include Bockhold, of when the comprehensive control test program ended. Then, in the June 29 Revision to the LER, when GPC represented to NRC a point in time when this comprehensive test program was completed, there were not at least 18 successful starts on each machine from that point to April 19. When the accuracy of the April 19 LER statement became the subject of scrutiny by OI, GPC redefined the end of the comprehensive test program and, fortuitously, were able to count at least 18 successful starts from this new point to April 19.

As a final note, OI again points out that the GPC Response denies the existence of certain violations, and also addresses issues of materiality. Consideration of these aspects of the NRC Enforcement process is within the purview of the Offices of Enforcement and General Counsel.