

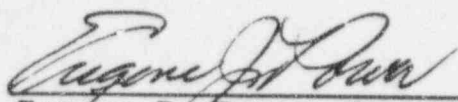
Title: GENERAL MAGNETICS/ELECTRIC WHOLESALE  
SUSPECTED PRODUCT SUBSTITUTION -  
COUNTERFEIT CIRCUIT BREAKERS


Vendor:  
General Magnetics/  
Electric Wholesale  
2201 Yates Avenue  
Commerce, California

Case Number: 5-91-002  
Report Date: October 3, 1991  
Control Office: OI:RV  
Status: CLOSED

Reported By:

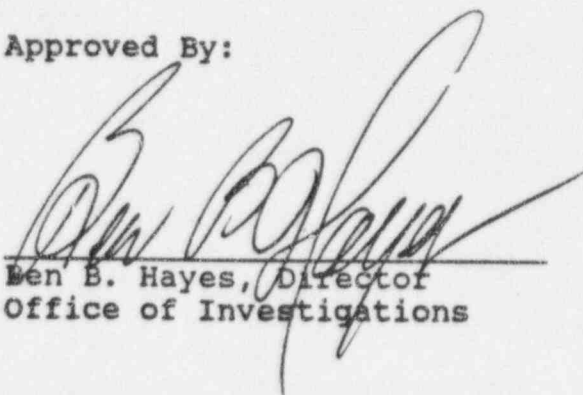
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WARNING

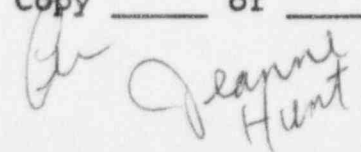
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Deanne Hunt

## SYNOPSIS

On March 25, 1991, the Office of Investigations (OI), Region V, U.S. Nuclear Regulatory Commission (NRC), initiated an investigation to determine if General Magnetics/Electric Wholesale (GMEW), Commerce, California, sold refurbished circuit breakers (CBs) as new to B&S Electric Supply Company, Inc. (B&S), Atlanta, Georgia, who in turn sold the CBs to Hatch Nuclear Power Plant (HNPP), Baxley, Georgia.

In April 1988, the NRC learned that counterfeit or defective CBs were being furnished to nuclear power plants. It was also during that period of time that Square D Company, a CB manufacturer, brought a civil suit against several firms who were allegedly refurbishing Square D CBs. GMEW was one of the suspect firms. Testimony obtained during the Square D litigation indicated GMEW was refurbishing CBs, applying counterfeit manufacturers' and Underwriters Laboratory (UL) labels to the refurbished CBs, and selling the refurbished used CBs. In GMEW sales, the purchaser of a CB from GMEW was not advised whether a CB was new or used at the time of the purchase.

In compliance with NRC Bulletin 88-10, nuclear power plants were required to provide reasonable assurance that CBs for safety related application were traceable to the original manufacturer. In complying with the bulletin, HNPP identified 20 untraceable CBs, to include four CBs, part number HFB3050, all of which were originally manufactured by Westinghouse Electric Corporation. The investigation determined that the four HFB3050 CBs had been purchased from B&S, who had purchased them from GMEW, with direct shipment from GMEW to HNPP. Subsequent testing of some of untraceable CBs was performed by an independent testing firm, and one of the HFB3050 CBs, which had been removed from a safety related application in HNPP, failed the time delay overcurrent trip test. Another one of the four HFB3050 CBs, also from the safety related system, was examined by Westinghouse who advised that the CB had been refurbished, had other than Westinghouse parts, and had a UL label as part of the Westinghouse label. Payment by B&S to GMEW for the four CBs was accomplished through use of the U.S. Postal Service.

Since HNPP did not invoke the provisions of 10 CFR Part 21 or 10 CFR Part 50, Appendix B in the purchase order for the four CBs, no NRC regulatory violations occurred in the sale transaction. However, during the investigation, evidence of violations of Federal criminal law by GMEW was discovered, to include: 18 U.S.C. 1341, Mail Fraud, 18 U.S.C. 1343, Wire Fraud, and 18 U.S.C. 2320, Trafficking in Counterfeit Goods.

OI has been participating in a joint investigation of this matter with the Department of Defense Office of the Inspector General, Defense Criminal Investigative Service, and in conjunction with the U.S. Attorney's Office, Central District of California, Los Angeles, California.

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## ACCOUNTABILITY

The following portions of this Report of Investigation (Case No. 5-91-002) will not be included in the material placed in the Public Document Room. They consist of pages 3 through 23.

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## TABLE OF CONTENTS

	<u>Page</u>
SYNOPSIS.....	1
ACCOUNTABILITY.....	3
TABLE OF CONTENTS.....	5
APPLICABLE REGULATIONS.....	7
LIST OF INTERVIEWEES.....	9
DETAILS OF INVESTIGATION.....	11
Purpose of Investigation.....	11
Background.....	11
Coordination with NRC Staff.....	12
Summary.....	12
Evidence.....	12
Conclusions.....	17
SUPPLEMENTAL INFORMATION.....	19
LIST OF EXHIBITS.....	21
REFERENCES.....	23

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## APPLICABLE REGULATIONS

10 CFR Part 21.21(a). Notification of failure to comply or existence of a defect.

(a) Each individual, corporation, partnership or other entity subject to the regulations in this part shall adopt appropriate procedures to:

(1) Provide for: (i) Evaluating deviations or (ii) informing the licensee or purchaser of the deviation in order that the licensee or purchaser may cause the deviation to be evaluated unless the deviation has been corrected; and

(2) Assure that a director or responsible officer is informed if the construction or operation of a facility, or activity, or a basic comment supplied for such facility or activity:

(i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order or license of the Commission relating to a substantial safety hazard, or

(ii) Contains a defect. The effective date of this paragraph has been deferred until January 6, 1978.

10 CFR Part 50, Appendix B, Criterion VII. Control of Purchased Material, Equipment, and Services

Measures shall be established to assure that purchased material, equipment, and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures shall include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery. Documentary evidence that material and equipment conform to the procurement requirements shall be available at the nuclear powerplant or fuel reprocessing plant site prior to installation or use of such material and equipment. This documentary evidence shall be retained at the nuclear powerplant or fuel reprocessing plant site and shall be sufficient to identify the specific requirements, such as codes, standards, or specifications, met by the purchased material and equipment. The effectiveness of the control of quality by contractors and subcontractors shall be assessed by the applicant or designee at intervals consistent with the importance, complexity, and quantity of the product or services.

18 U.S.C. 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.



18 U.S.C. 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

18 U.S.C. 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

18 U.S.C. 2320. Trafficking in counterfeit goods or services

(a) Whoever intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services shall, if an individual, be fined not more than \$250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than \$1,000,000. In the case of an offense by a person under this section that occurs after that person is convicted of another offense under this section, the person convicted, if an individual, shall be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and if other than an individual, shall be fined not more than \$5,000,000.

LIST OF INTERVIEWEES

	<u>EXHIBIT</u>
CONTRERAS, Charley, President, GMEW.....	7, 8
HIDALGO, Felix, Sales & Purchasing, GMEW.....	9
McCOMBS, Deanne, Senior Engineer, GPC.....	10
POWNALL, Henry, F., Assistant Manager, B&S.....	22
QUEVEDO, Cruz, Shop Foreman, GMEW.....	10

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## DETAILS OF INVESTIGATION

### Purpose of Investigation

This investigation was initiated to determine if General Magnetics/Electric Wholesale (GMEW), Commerce, California, sold refurbished counterfeit circuit breakers (CBs), represented as new, to B&S Electric Supply Company, Inc. (B&S), Atlanta, Georgia, who in turn sold them to Hatch Nuclear Power Plant (HNPP), Baxley, Georgia. HNPP is owned and managed by Georgia Power Company (GPC), an NRC licensee.

### Background

This investigation evolved from information received in April 1988 from the Pacific Gas & Electric Company (PG&E), an NRC licensee, that counterfeit or defective CBs had been furnished to Diablo Canyon Nuclear Power Plant, Avila Beach, California. The suspect CBs were identified as having been originally manufactured by Square D Company. As a result, the Office of Investigations (OI) initiated an investigation, Case No. 5-88-004, regarding that allegation.

Also, in the spring of 1988, the Square D Company brought suit in U.S. District Court, Central District of California, Los Angeles, California, against several firms who were allegedly refurbishing Square D CBs. GMEW was one of the defendants in the suit.

Further OI investigative efforts, to include federal search warrants, substantiated that several companies in the Los Angeles area were refurbishing used molded case CBs, applying counterfeit labels, and representing these CBs as new to wholesale and retail electrical distributors, who had furnished the CBs to various customers, including governmental agencies and several nuclear power plants. In addition to Square D Company products, the suspected counterfeit CBs included those originally manufactured by Westinghouse, General Electric, I-T-E, Cutler-Hammer, Sylvania, and Bryant.

On November 22, 1988, NRC issued NRC Bulletin No. 88-10 which addressed the issue of nonconforming molded case CBs. The bulletin required, in part, that the nuclear power plants perform certain actions in order to provide reasonable assurance that CBs, which were purchased for safety related application but without traceability to the manufacturer, would perform their intended safety functions.

In response to the NRC bulletin, GPC reported that they had purchased four suspect Westinghouse CBs from B&S, a supplier, who had obtained the items from GMEW.

Thus, on March 25, 1991, OI, Region V opened this investigation, Case No. 5-91-002, to detail the involvement of GMEW in the sale of CBs to B&S and subsequently to HNPP (Exhibit 1).

## Coordination with NRC Staff

During June and July 1988, coordination was effected with the Vendor Inspection Branch (VIB) and NRC Office of Nuclear Reactor Regulation (NRR) regarding the potential CB counterfeiting matter. Technical assistance for OI investigators was obtained for the execution of search warrants at several suspected CB counterfeiters (Exhibit 2).

## Summary

On July 7, 1988, a federal search warrant was executed at Pencon International, Inc., dba GMEW, 2201 Yates Avenue, Commerce, California. During the course of the search of GMEW, evidence of reconditioning of CBs was observed on the premises (Exhibit 3).

In complying with NRC Bulletin No. 88-10, GPC had identified 20 CBs which were not traceable to the manufacturer (Exhibit 16). Of those 20 untraceable CBs, GPC identified four Westinghouse manufactured CBs, Part No. HFB3050, as having been purchased from B&S, who had obtained the items from GMEW. Of the four Westinghouse CBs, one was in warehouse storage, one was a spare for a nonsafety related application, and two CBs were installed in a safety related system.

Depositions taken in the Square D civil case of Charley CONTRERAS, President, GMEW, Felix HIDALGO, sales and purchasing, GMEW, and Cruz QUEVEDO, Shop Foreman, GMEW, revealed that GMEW reconditioned CBs and applied reproductions of manufacturers' labels and Underwriter Laboratory (UL) labels to CBs sold by GMEW (Exhibits 6, 8, and 9).

Three of the 20 untraceable CBs discovered by GPC were tested by Multi-Amp Services Corporation (MASC), an independent testing firm, and failed. One of those three, an HFB3050 which had been removed from a safety related system, failed the time-delay overcurrent trip test (Exhibit 17). Also, another HFB3050 CB from a safety related system was examined by a Westinghouse technical representative, who determined the CB had been reconditioned and had a counterfeit UL label (Exhibit 21).

## Evidence

1. On July 7, 1988, a federal search warrant, which was obtained by OI, NRC, was executed on the GMEW premises, and various business records were seized. The records indicated that GMEW had made sales of CBs to utilities that own and operate nuclear power plants (Exhibit 3, p. 2).
2. Included in the seized records of GMEW was a customer address card for B&S in Atlanta, Georgia (Exhibit 4).
3. Kamalakar NAIDU, an NRC technical inspector who participated in the search of GMEW on July 7, 1988, included the following in reporting his observations and conclusions:
  - a. That electrical spare parts for CBs were labeled and neatly stored on racks (Exhibit 5, p. 1).



- b. That there were used 480 volt CBs manufactured by Westinghouse and others in stock (Exhibit 5, p. 1).
  - c. That three 480 volt molded case Westinghouse CBs were being cleaned and reassembled. The internal components appeared to be intact and original. The outer molded case received some polishing to give it a new appearance (Exhibit 5, p. 2).
  - d. NAIDU concluded that GMEW was capable of supplying CBs and other electrical equipment which could superficially appear as new and authentic (Exhibit 5, p. 3).
4. In his deposition taken on June 8, 1988, in the civil suit by the Square D Company, CONTRERAS indicated:
- a. That GMEW sold electrical materials to include new and used CBs. He estimated that the sales of CBs were 70% new CBs and 30% used CBs (Exhibit 6, pp. 28 & 29).
  - b. That GMEW did business with nuclear plants, and sold CBs to San Onofre [a plant in California], the plant in Arizona, and to another one in Georgia (Exhibit 6, p. 58).
  - c. That he was not aware if GMEW placed labels on Westinghouse CBs that contained the words Underwriter's Laboratory or the letters "UL" (Exhibit 6, pp. 84-85).
  - d. That labels with Westinghouse and UL on them had always been given to him and had been in his possession. He never needed the labels because he stocked new Westinghouse material from the factory (Exhibit 6, p. 85).
  - e. That, when he personally sold CBs, he never advised the customer that the CB was either new, like new, or used (Exhibit 6, pp. 90 and 91).
5. In an OI interview on August 18, 1988, CONTRERAS said he was no longer placing manufacturers' labels on CBs that he had reconditioned (Exhibit 7, p. 2).
6. In his deposition taken on June 15, 1988, in the civil litigation by Square D Company, HIDALGO indicated:
- a. That it is common that nothing was said by the seller of CBs to GMEW regarding the CB being new or used (Exhibit 8, pp. 39 and 40).
  - b. That GMEW had not sold CBs for use in nuclear power facilities (Exhibit 8, p. 45).
  - c. That he had no way of knowing if a CB sold by GMEW may have ended up being used at a nuclear power facility (Exhibit 8, p. 46).
  - d. That some purchasers of CBs from GMEW did not know they were receiving a used Square D CB (Exhibit 8, p. 68).

- e. That original UL labels were photocopied by whomever was available (at GMEW) or sometimes photocopied at PIP Instant Printing (Exhibit 8, p. 69).
  - f. That when someone in the [electrical] industry purchased a CB, that individual expected to receive a new CB unless there was some contrary indication (Exhibit 8, p. 93).
7. In his deposition taken on July 22, 1998, in the Square D litigation, QUEVEDO provided, in part, the following:
- a. In his job, he was responsible for testing all the used CBs and for supervising the six men who cleaned and assembled CBs (Exhibit 9, pp. 26-28).
  - b. He confirmed that GMEW sold both new and used CBs (Exhibit 9, pp. 29-31).
  - c. He did not recall what percentage of (GMEW) Westinghouse CB (stock) was new or used (Exhibit 9, p. 59).
  - d. He stated that (Square D) yellow labels were applied to reconstructed Square D CBs sold by GMEW (Exhibit 9, pp. 83 and 84).
  - e. He indicated that GMEW opened and cleaned used CBs, and did electrical tests (Exhibit 9, p. 85).
  - f. He confirmed that GMEW applied grease as a lubricant to the used Square D CBs which were sold (Exhibit 9, p. 91).
  - g. He acknowledged that GMEW replaced parts on used Square D CBs in the reconstruction process (Exhibit 9, pp. 93-94).
  - h. He acknowledged that what he understood to be UL labels were applied to used Square D CBs (Exhibit 9, pp. 125-128).
  - i. He indicated that when GMEW applied new UL labels to CBs it was intended to indicate that the breakers complied with UL specifications (Exhibit 9, pp. 129- 130).
  - j. He claimed that by doing certain inspections (thermal resistance, magnetic resistance, and millivolt test) GMEW knew whether the used CB complied with UL specifications (Exhibit 9, pp. 131-133).

INVESTIGATOR'S NOTE: Although the above testimony generally addresses Square D products, similar type actions (e.g., labeling, replacements of parts, etc.) could be expected to have been accomplished on other CB manufactured brands which were repaired or refurbished by GMEW.

8. McCOMBS, GPC senior engineer, advised that in complying with NRC Bulletin No. 88-10, GPC had identified 20 CBs which had been purchased through local (Georgia) suppliers (which were not traceable to the CB manufacturer). She stated that included in those 20 nontraceable CBs were four CB's which had been supplied by GMEW on Purchase Order (PO)



#B41679. McCOMBS said that 16 of the 20 CBs were sent for testing to MASC, however only three CBs were tested and failed the electrical tests (Exhibit 10, p. 1).

INVESTIGATOR'S NOTE: Excluding the four HLB3050 CBs from GMEW, the remaining untraceable CBs had been supplied by HLC Electric and California Breakers, two suspected suppliers of counterfeit CBs. HLC and California Breakers were the subjects of two separate OI investigations, 5-89-010 and 5-89-009, respectively.

9. GPC PO B41679 (a blanket purchase order) with Release No. 293, dated April 21, 1987, was the documentation authorizing the purchase of the four Westinghouse CBs, Part No. HFB3050, from B&S (Exhibit 11).
10. GMEW Invoice 41036, dated April 24, 1987, reflected the sale of four Westinghouse HFB3050L CBs for \$611.14 to B&S with shipment to "Georgia Power Co, Plant Hatzh (sic), B41679 Release 0293, Baxley, Georgia" (Exhibit 12).
11. B&S Invoice 4538940, dated May 4, 1987, reflected the sale of four HFB3050L CBs to GPC Plant Hatch (Exhibit 13).
12. HNPP Material Inspection Request (MIR), MIR/Tag No. 87-1323, reflected the material receipt inspection of four HFB3050L Westinghouse CBs on May 19, 1987, on PO No. B41679, Rel 293. The vendor was shown as B&S Electric (Exhibit 14).
13. By a letter, dated January 11, 1989, to GPC, B&S confirmed that the four Westinghouse HFB3050 CBs, on GPC PO B41679, Release 293, had been purchased on B&S PO DS13-1229D from GMEW. Further, the GMEW invoice number for the sale to B&S was 41036 (Exhibit 15).
14. In a letter dated March 31, 1989, in response to NRC Bulletin No. 88-10, GPC advised that two Westinghouse HFB3050L CBs (CB Item Nos. 86 and 87) on GPC PO B41679 had been installed in the diesel generator battery chargers, a safety related system (Exhibit 16, p. 10).
15. In separate correspondence dated May 10, 1989, MASC provided the data sheets for the testing of the HNPP CBs in which it was reported that CB #86 failed the electrical testing (Exhibit 17).
16. By a letter, dated March 7, 1990, to the NRC, GPC provided information regarding the inspection/testing of three suspect CBs received on PO B41679 from GMEW. CB #86 (i.e., GPC owner Breaker Test ID No. CB #86) was among those tested (at MASC), and it failed the time-delay overcurrent trip test (Exhibit 18, p. 5).
17. On April 3, 1990, two HFB3050 CBs ID No. 86 and 87 which were believed to have counterfeit labels were obtained on an evidence custody receipt by OI for subsequent evaluation (Exhibit 19).
18. By letter dated April 30, 1990, the Westinghouse Electric Corporation provided the results of their inspection of several suspect CBs which had

been furnished by the NRC. The inspection results revealed, in part, that:

- a. Item #86 had been manufactured in 1982 and had been used.
  - b. Item #87 had been remanufactured. In their detailed evaluation of Item #87, it was further reported that: the label had the UL (label) as part of the (Westinghouse) paper label; the code date was questionable; the 50 handle was not a Westinghouse item; there were old lug screws; and the sealant had been removed and replaced. The internal condition of the CB "looks good" (Exhibit 20).
19. POWNALL testified that on or about April 24, 1987, he received a telephone order for four HFB3050 CBs from HNPP. The sale was authorized by GPC PO B41679, Release No. 293 (Exhibit 21, p. 1).
  20. POWNALL said that on or about April 24, 1987, he had contacted GMEW by telephone and had ordered four HFB3050 CBs on B&S PO No. DS13-1229D, which was a PO for tracking purposes only. He further stated that the purchase was to be a direct shipment from GMEW to HNPP (Exhibit 21, pp. 1 and 2).
  21. POWNALL testified that in April 1987 he was not knowledgeable:
    - a. That GMEW refurbished or rebuilt CBs;
    - b. that GMEW sold used or refurbished CBs,
    - c. and, he did not know that GMEW furnished supplies were anything other than new (Exhibit 21, p. 2).
  22. POWNALL stated that B&S issued Check No. 1427, dated June 10, 1987, in the amount of \$611.14 to GMEW for the four CBs on GMEW Invoice 41036. On or about June 10, 1987, POWNALL placed, or caused to be placed, Check No. 1427 into the U.S. Postal Service (Exhibit 21, p. 2).
  23. The cashed, canceled B&S Check No. 1427 revealed it was made payable to General Magnetics in the amount of \$611.14. The reverse of the check indicated it had been deposited in the account of GMEW (Exhibit 22).

### Conclusions

HNPP purchased commercial grade circuit breakers without citing 10 CFR Part 21 or 10 CFR Part 50, Appendix B, therefore there were no potential violations of NRC regulatory requirements during the sale transaction.

The OI investigation did, however, develop evidence indicating potential violations of 18 U.S.C. 3141, Mail Fraud, 18 U.S.C. 1343, Wire Fraud, and 18 U.S.C. 2320, Trafficking in Counterfeit Goods. The investigation disclosed that GMEW trafficked in counterfeit goods by reproducing the UL trademark on a label and placing it on a reconditioned CB sold to B&S. Further, GMEW utilized the U.S. Postal Service and utilized a facility of interstate communication (telephone) to promote and effect a fraud, specifically, the sale of reconditioned CBs, when they were not new, and by causing the

U.S. Postal Service to be used to request and receive payment for the breakers.

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## SUPPLEMENTAL INFORMATION

Because of the potential violations of 18 U.S.C. identified during this investigation, this matter has been coordinated directly with the U.S. Attorney's Office, Central District of California, Los Angeles, California. OI has also been participating in a joint investigation with the Department of Defense Office of the Inspector General and the Defense Criminal Investigative Service.

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## LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Request for Investigation, OI:RV, dated March 25, 1991.
2	Memorandum, undated, from B. BRACH, subject: Background Information for the Special Vendor Inspection on July 6, 1988.
3	Results of Field Work, undated, by P. V. Joukoff, Investigator, OI:RV.
4	Customer address card for B&S, seized from GMEW business records.
5	Memorandum, undated, from K. R. NAIDU to J. E. KONKLIN, subject: Summary of Short Circuit Inspection (Team D).
6	Deposition of Charley J. CONTRERAS, taken on June 8, 1988.
7	Report of Interview with Charles (sic) CONTRERAS, on August 18, 1988.
8	Deposition of Felix HIDALGO, taken on June 15, 1988.
9	Deposition of Cruz QUEVEDO, taken on July 22, 1988.
10	Results of Meeting at Hatch Nuclear Power Plant, Baxley, Georgia, on April 3, 1990.
11	HNPP Purchase Order No. B41679, Release No. 0293.
12	GMEW Invoice No. 41036, dated April 24, 1987.
13	B&S Invoice No. 4538940, dated May 4, 1987.
14	HNPP Material Inspection Request, MIR/Tag No. 87-1323, dated May 19, 1987.
15	Letter, dated January 11, 1989, B&S to GPC.
16	Letter, dated March 31, 1989, GPC to NRC.
17	Letter, dated May 10, 1989, MASC to GPC.
18	Letter, dated March 7, 1990, GPC to NRC.
19	Statement regarding receipt of evidence and evidence custody document, dated April 3, 1990.
20	Letter, dated April 30, 1990, Westinghouse Electric Corporation to NRC: OI.



- 21 Sworn Statement of POWNALL, taken on May 1, 1991.
- 22 Copy of Canceled B&S Check No. 1427, dated June 10, 1987.

REFERENCES

U.S. Nuclear Regulatory Commission Bulletin No. 88-10