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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

OFFICE OF SECRETARY
DOCKETING & SERVICE
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Dear Commissioners:

On March 18, 1997, Frank J. Miraglia, Jr, Acting Director, Office of Nuclear Reactor Regulation, issued DD-97-06, a Director's Decision Under 10 C.F.R. 2.206 concerning filings made on behalf of Messrs. Marvin B. Hobby and Allen L Mosbaugh, alleging acts and omissions on the part of Georgia Power and Southern Nuclear that call into question their ability to faithfully adhere to regulatory requirements and satisfy the high standard of integrity and excellence the American people have the right to expect to be maintained at all times by a nuclear licensee. On behalf of Marvin B. Hobby, I hereby request that the Commission, pursuant to 10 C.F.R. 2.206(c), institute a review of DD-97-06. This action is requested because the Director's Decision contains inappropriate findings, ignored substantial evidence, ignored case authority, and otherwise seeks to portray the enforcement action taken as being meaningful when it clearly is not.

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1. Illegal transfer of control

A. Failure to consider controlling case precedent

NRC Staff was required to determine whether an improper transfer of control in violation of Section 184 of the Atomic Energy Act occurred with respect to plant Vogtle and plant Hatch following The Southern Company's decision to form the SONOPCO project and to place Mr. Farley in a management position where he could influence nuclear operations over these plants without obtaining written consent for the transfer of such control from the Nuclear Regulatory Commission.^{1/} DD-97-06 addressed this issue between pages 44-55 and in Appendix A. It is nothing less than remarkable that Staff was willing to reach a determination as to whether a transfer of control, as defined by Section 184 of the Atomic Energy Act, occurred without considering or discussing the legal standards applicable to such a determination. Although the controlling NRC case law concerning illegal transfer, Safety Light Corporation, et al. (Bloomsburg Site Decommissioning and License renewal Denials), 41 N.R.C. 412 (1995) ("Safety Light"),^{2/} was specifically addressed in briefs filed by the Intervenor in the

^{1/} Section 184 of the Atomic Energy Act provides:

No license granted hereunder...shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall, after securing full information, find that transfer is in accordance with the provisions of this Act, and shall give its consent in writing.

42 U.S.C. § 2234 (1982).

^{2/} The interpretation of Section 184 was initially discussed by an earlier panel of the ASLB in Safety Light Corp. (Bloomsburg Site), LBP-90-7, 31 N.R.C. 116, 129 (1990). This case was equally ignored by Staff.

licensing proceeding^{3/}, NRC Staff failed to cite to or consider the controlling case authority and otherwise failed to analyze whether a transfer of control occurred based on the standards announced in Safety Light.^{4/}

The Safety Light Board specifically announced that section 184 prohibited the expediency of corporate restructuring as a justification for avoiding the requirements set forth in

^{3/} See Intervenor's Final Statement of Fact and Conclusions of Law, filed on November 30, 1995.

^{4/} Safety Light observed that:

[T]he starting point for determining whether...corporate restructuring...violated section 184 is the statute itself. That provision provides that no NRC license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this [Act], and shall give its consent in writing.

The plain language of this section is exceptionally broad and the reach of the provision is all encompassing. The title of section 184, 'Inalienability of Licenses,' only reinforces its breadth inasmuch as 'inalienable' means 'incapable of being alienated, surrendered, or transferred.' The reach of the statute is manifest from its comprehensive language, and section 184 contains absolutely no limiting provisions. The terms 'voluntarily or involuntarily, directly or indirectly' and the phrase 'through transfer of control of any license to any person' are words and phrases of inclusion indicating a congressional intent to expand the scope of the section to the maximum extent. Indeed, it would be difficult to write a broader or more encompassing provision. Nor is the broad reach of section 184 surprising as a component of an overall regulatory scheme that has been described as 'virtually unique in the degree to which broad responsibility is reposed in the administering agency.' Thus, on its face, section 184 not only broadly prohibits all manner of transfers, assignments, and disposals of NRC licenses, but also all manner of actions that have the effect of, in any way, directly or indirectly, transferring actual or potential control over a license without the agency's knowledge and express written permission.

* * *

Moreover, the language of the Atomic Energy Act itself demonstrates that Congress placed no importance on the corporate form in enacting section 184. That provision prohibits, inter alia, the direct or indirect transfer of control of any license 'to any person' without the Commission's express written consent. Section 11s of the Act then defines 'person' in the broadest possible manner to mean (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

...[T]he inclusion of a 'corporation' in the definition of a 'person' and the use of the latter term in the inalienability of licenses provision indicates that Congress intended a corporation to be treated in the same manner as all other entities.

41 N.R.C. at 451, 456-457 (footnote citations omitted).

section 184 and acknowledged that **indirect** transfers of control are prohibited unless **written** consent from the NRC is obtained. The Director's Decision is erroneous because it fails to consider whether written permission for Mr. Farley's involvement was required, nor does it address whether Mr. Farley had established or exercised sufficient indirect control to require written permission.^{5/} It was more expedient for the Southern Company and GPC to form a separate non-incorporated entity, the SONOPCO project, because GPC could not obtain approval from a co-owner, Oglethorpe Power Company. It was equally more expedient to introduce Mr. Farley into the management process without first seeking approval from NRC or Oglethorpe Power Company. But, "[i]f the statutory proscription against the transfer of control on NRC licenses could be avoided by the expediency of a corporate restructuring, complex or otherwise, then section 184 would be a toothless tiger." Safety Light Id. at 454. The Director's Decision treats Section 184 as a toothless tiger. Indeed, if a suspected nuclear terrorist was able to exercise the same level of behind-the-scenes control as Mr. Farley exercised, it is impossible to conceive that NRC would conclude that providing that level of control would not constitute a violation of Section 184. DD-97-06 establishes a dangerous precedent in a country where the rule of law is to be equally applied.

NRC Staff also ignored case law concerning the premature acquisition of control by an individual outside of the licensee's corporate organization. This issue was directly addressed in Phoenix Broadcasting Co., 44 F.C.C. 2d at 839 and Stereo Broadcasters, Inc., 87 F.C.C. 2d 87, 93 (1981). The factual basis in Phoenix Broadcasters and Stereo Broadcasters for concluding

^{5/} Mr. Farley was never "double hatted" nor was his involvement ever depicted on an organizational chart submitted to or shown to anyone within the NRC; and at no time did GPC seek to obtain written permission for his involvement.

that an impermissible transfer of control occurred are dwarfed in comparison to the facts before NRC Staff. NRC Staff's failure to consider the applicability of this case law is equally troubling.

B. Failure to adequately consider evidence

The record demonstrates that corporate management located within the SONOPCO project attended weekly staff meetings, which were referred to by the attending managers as the "Farley Staff Meetings". NRC Staff asserts that Mr. Farley "provided no management oversight or direction at these meetings," and that "[c]onsistent with providing support services to the SONOPCO Project and his future position as CEO of Southern Nuclear, Mr. Farley's attendance was to keep abreast of system plant developments and, as Executive Vice President-Nuclear of The Southern Company, the meetings enabled him to provide periodic reports to The Southern Company Board of Directors."⁶ DD-97-06 at A-13. Is it conceivable that Mr. Farley, the most powerful, most influential and most senior Southern System executive within the SONOPCO project did not and could not exercise some form of control over the executive decision-making process? GPC claimed in its response to the 2.206 petition that matters pertaining to nuclear operations were discussed by the GPC Management Council. This assertion, it turns out, was false. By August of 1989, not a single manager responsible for GPC's nuclear operations attended GPC Management Council meetings. The level of ignorance of GPC's CEO as to the operation of GPC's nuclear plants is demonstrated by Mr. Dahlberg's own testimony. During the ASLB proceeding, Mr. Dahlberg testified that he was not made aware of the fact that allegations of "wilful misconduct" had been levied against the plant Vogtle Vice President, Ken McCoy, or the plant Vogtle General Manager, George Bockhold. Tr. 1152-53 (Dahlberg).⁶ 7/

⁶ Needless to say, Mr. Farley not only knew of the charges, he knew who filed them and the nature (continued...)

⁶(...continued)

of the evidence in the possession of NRC (i.e., tape recordings). Tr. 1831-39 (Farley)

⁷ On September 11, 1990, Mr. Hobby filed a petition with the NRC pursuant to 10 C.F.R. 2.206 alleging, *inter alia*, that Georgia Power had illegally transferred control over nuclear operations to the SONOPCO project in violation of 10 C.F.R. 50.80. NRC staff asked GPC to issue a response under oath, and GPC issued such a response on April 1, 1991. See ASLB Phase I Intervenor Exhibit 48. GPC's response contains false and misleading statements concerning: 1) Mr. McDonald's participation and attendance during GPC Management Council meetings; 2) the composition of the GPC Management Council; and 3) the functioning of the Management Council.

1) Mr. McDonald's Participation and Attendance at Georgia Power's Management Council meetings

GPC's April 1, 1991 2.206 response contained an excerpt from deposition testimony of a former GPC executive, H. Grady Baker, alleging that "McDonald particularly is a member of Georgia Power's management council and attends most of the meetings of the management council or many of the meetings of the management council" and then goes on to state that:

The GPC Management Council is made up of all the Executive and Senior Vice Presidents of GPC. It functions as a policy-setting body, makes corporate resource allocation decisions and facilitates communications and coordination between GPC departments. Between April 1988 and December 1990, Mr. McDonald reported periodically to the GPC Management Council with Mr. Dahlberg presiding, on nuclear operating matters, including budget matters and organizational goals.

Intervenor Exhibit 48 at pp. 6-7 (emphasis added).

It was revealed before the ASLB that between August, 7, 1989 and December 19, 1990, Mr. McDonald did not attend a single Management Council meeting, and other than participating telephonically for 10 minutes on December 28, 1990, appears to not have attended any other Management Council meetings; and that as of May 1988 no other person in nuclear operations, including Mr. Hairston and Mr. McCoy, attended or participated in any Management Council meetings. See ASLB Phase I Intervenor Exhibit 135; 1096 (Mr. McDonald's attendance at Management Council meetings did not change after 1990).

2) Composition of the Management Council

The 2.206 petition response also asserted that "GPC Management Council is made up of all the Executive and Senior Vice Presidents of GPC." Intervenor Phase I Exhibit 48 at p. 7 (emphasis added). GPC conceded at the ASLB hearing that this statement was false because Mr. Hairston, a senior vice president at the time, was the only senior vice president not functioning as a member of GPC's Management Council.

3) The Management Council's involvement with nuclear operations

The April 1, 1991 petition response further claimed that, with respect to nuclear operations, the Management Council "functions as a policy-setting body, makes corporate resource allocation decisions"
(continued...)

Indeed, Mr. Dahlberg did not know many basic terms with which any "hands on" manager of a nuclear facility would have to be fully familiar. He did not know what a NUREG was; after years of investigation by NRC into false statements contained in the April 9, 1990 Confirmation of Action letter, Mr. Dahlberg still had not clue as to what this document was; he had no idea that water was the moderator for the nuclear fission process at plant Vogtle; or that plant Vogtle had a Plant Review Board. ASLB Tr. 1151-52 (Dahlberg). He never saw the emergency plan for plant Vogtle (Tr. 1232); he didn't know that Farley conducted weekly staff meetings nor that Mr. McDonald's office was located next to Mr. Farley's. ASLB Tr. 1181-83 (Dahlberg). Moreover, he was completely unaware of the issues or reasons why GPC received fines from the NRC. ASLB Tr. 1151 (Dahlberg). Likewise, he did not know the titles of or the identity of senior nuclear management (see, e.g., ASLB Tr. 1150-1151), and he did not know whether the SONOPCO project administrative and technical vice presidents, Long and McCrary, were officers of GPC. ASLB Tr. 1149. Finally, Mr. Dahlberg did not prepare his own evaluation of Mr. McDonald.^{8/}

^{2/}(...continued)

and facilitates communications and coordination between GPC departments" and that "Mr. McDonald reported periodically to the GPC Management Council "on nuclear operating matters, including budget matters and organizational goals." Intervenor Phase I Exhibit 48 at p. 7 (emphasis added). The complete exclusion of nuclear operations management from participation on the Management Council renders this assertion false.

^{8/} The only form of regular contact GPC alleges Mr. Dahlberg actually had with Mr. McDonald were in the form of telephone calls. As a matter of law, the undocumented phone calls between Dahlberg (and/or members of his staff) and Mr. McDonald (and/or members of his staff) are not a sufficient basis to establish control. For example, in Telephone and Data Systems, Inc. v. FCC, 19 F.3d 42, 49 (D.C. Cir. 1994), the Court stated that the control of daily operation "must mean more than approval of major expenses and a loosely defined practice of maintaining 'contact'." The Court also noted that lack of involvement in critical responsibilities demonstrated lack of control. Id. Indeed, Mr. Dahlberg's near total lack of experience and knowledge of nuclear operations demonstrates that the

(continued...)

Moreover, Mr. Hobby's counsel recently obtained an April 12, 1990, letter, with attachments, confirming Mr. Farley's functioning as a CEO over the SONOPCO project before its incorporation. Under the heading "Recommendation 2: 360-Degree Feedback Process," it denotes that each CEO is to participate in identifying the individuals with CEO potential so that a 360-degree feedback process could be implemented to assess that manager's suitability for promotion. See page No. 004566. The document then states that "Joe Farley (SONOPCO senior management team), Allen Franklin (SCS Management Council), and Paul DeNicola (MPCo senior management team) expressed their intent to begin implementation of the Southern Company 360-Degree Feedback Process, top down, within their organizations." Id., at page No. 004567 (emphasis added). A copy of this document is attached for your consideration. (Attachment 1). Mr. Farley and not Mr. Dahlberg was responsible for developing GPC's nuclear management.

NRC Staff apparently believes that the element of control could not be sufficiently established although 1) GPC submitted a response to a 2.206 petition falsely claiming that GPC Management Council functioned as a GPC management oversight body over nuclear operations; 2) GPC's 2.206 petition response falsely claimed that GPC managers regularly attended these Management Council meetings; but, in fact, the managers who were supposed to be attending the Management Council meetings were instead attending weekly "Farley Staff Meetings"; 3) Mr. Farley -- not GPC's president and CEO -- began reporting to the Southern Company Board about GPC's nuclear operations; 4) Mr. Dahlberg didn't even know of the existence of the Vogtle Plant

³(...continued)
phone communication was incomplete or insufficient to demonstrate control.

Review Board or most any other aspect of GPC's nuclear operations; and most troubling, 5) NRC Staff's failure to mention that Mr. Dahlberg was oblivious that GPC nuclear operations managers were under investigation for having engaged in potential acts of willful misconduct, while Mr. Farley, on the other hand, was well aware of these investigations.

In sum, the record clearly establishes that it was Mr. Farley and not Mr. Dahlberg who had his hand on the pulse of GPC's nuclear operations. By the end of 1989, Mr. Farley was stationed in the SONOPCO corporate office and positioned to directly influence all aspects of GPC's nuclear operations. On the other hand, Mr. Dahlberg established the Nuclear Operations Contract Administration group (NOCA) within weeks of assuming line management responsibility for GPC's nuclear operations. But Mr. Dahlberg's NOCA group was unable to perform its intended function because the SONOPCO project management, in particular Mr. Farley, determined that NOCA was superfluous and the SONOPCO management team decided to withhold its support and cooperation so that NOCA could not function.

2. The Director's Decision fails to address issues related to the submission of perjured testimony during the ASLB proceeding and fails to demonstrate that adequate enforcement action was taken.

A. Ken Stokes

The testimony of Mr. Stokes demonstrates the complete lack of candor Georgia Power personnel exhibit toward the NRC. Throughout the testimony, from his first appearance, there are several instances where he provided testimony that is simply untrue. When Mr. Stokes first testified before this Board on June 3, 1995, he submitted pre-filed testimony in which he stated that he was not aware of water ever being found in the diesel instrument air sensing lines. Stokes Phase II Prefiled testimony at 3. At the hearing he emphatically claimed that he never saw any "moisture at or inside the controlled air system" or "the air receiver," ASLB Tr. 7020-21, 7028,

7066 (Stokes), "that's what you're saying. There's -- there's not been any indication of water in the control system or -- or anything of that nature." ASLB Tr. 7161 (Stokes). And, denied seeing any water on two additional occasions. ASLB Tr. 7170; 7284 (Stokes). The ASLB was thereafter advised during an *in camera* session on August 17, 1995, that Mr. Johnston, a Cooper technician, had found water in the logic on at least two occasions in the February-March 1995 time period, and acknowledged that Mr. Stokes was either present when he found this water or was made aware of it. ASLB Tr. 11890. Mr. Stokes thereafter was forced to acknowledge that his prior testimony was false.

The Director's Decision completely ignores the significant event of a licensee submitting perjured testimony before an ASLB. NRC staff has taken no enforcement action against GPC or Mr. Stokes for this conduct. The Director's Decision is clearly deficient in that it takes no regulatory action against GPC or Mr. Stokes and therefore sets a dangerous standard of acceptable conduct that a licensee may exhibit during an ASLB hearing.

B. R. Patrick McDonald

i. *McDonald's denial that he was reviewed the LER*

During the course of the Mosbaugh Section 210 proceeding before the Department of Labor, Mr. McDonald testified under oath that he had no involvement with the review of the LER. Intervenor Phase II Exhibit 208. Likewise, GPC denied that Mr. McDonald was involved with a review of the LER when responding to Intervenor's Second Set of Interrogatories. Intervenor Phase II Exhibit 209. The false nature of this testimony was revealed during the ASLB hearing, when Mr. McDonald testified that he reviewed drafts of the LER and commented on the drafts, and tried to anticipate how it would be understood by the NRC. ASLB Tr. 11045-46 (McDonald). DD-97-06 makes no reference to this submission of false statements. The

failure to acknowledge the submission of false and misleading testimony in a Section 210 proceeding as well as repeating the same false assertion when submitting an answer to an interrogatory question during a licensing proceeding is substantial evidence of a lack of character. This evidence was completely ignored by NRC Staff.^{2/}

ii. *Omissions and Misrepresentations Related to Statements Concerning Georgia Power's Emergency Plan*

In the October 1, 1990 amendment to the 2.206 petition it states that remarks made by Mr. McCoy at a Vogtle plant site meeting and follow-up conversations occurring at the plant site indicated that Mr. Farley was contacted as part of the duty reporting chain. Intervenor Phase I Exhibit 49 at pp. 4-5. GPC responded to this assertion on April 1, 1991, claiming that:

Mr. McCoy does not believe his statements addressing the reporting structure for on-duty managers suggested that Mr. Farley was notified in lieu of Mr. Dahlberg. Vogtle project emergency planning procedures require the duty manager to notify senior corporate management, including both Mr. Dahlberg and Mr. Farley, in the event of a significant event at Vogtle.

* * *

The fact that Mr. Farley will be notified along with the GPC officers in the event of a nuclear-related emergency is not surprising.

Intervenor Exhibit 48 at p. 12 (emphasis added).

During Phase I of the ASLB proceeding, Mr. McDonald testified as follows:

CHAIRMAN BLOCH: So the On Call Project Manger by procedure at the time was required to call Mr. Farley, wasn't he?

^{2/} Mr. McDonald also made a knowingly false statement when he claimed that he asked Mr. Shipman if Mr. Hairston was on the April 19, 1990 phone call, and that Mr. Shipman indicated that he could not remember. Intervenor Phase II Exhibit 210, p. 25. However, Mr. Shipman testified that there was never a time when he did not recall that Mr. Hairston was on the call. The reason he remembers is that it was unusual for Mr. Hairston to walk into a conference call on the fourth floor and participate in it. ASLB Tr. 11322 (Shipman).

THE WITNESS: By these procedures, that is correct.

CHAIRMAN BLOCH: And they are the procedures of the plant. He would have been making a mistake if he did anything else, wouldn't he have.

THE WITNESS: That is correct.

* * *

Q [MR. KOHN]: Mr. McDonald, I would like you to look at Exhibit 48, page 12...And there's a sentence that says, "Vogtle Project Emergency Planning Procedures require the Duty Manager to notify senior corporate management including both Mr. Dahlberg and Mr. Farley in the event of a significant event at Vogtle." Do you see that?

A: I do.

Q: That is in fact a true statement, isn't it?

A: That is just what we've been talking about.

Q: I'm asking --

A: That's true.

Q: That is a true statement. Okay.

ASLB Tr. 1418-19, 1427-1428 (McDonald).¹⁰

Nonetheless, in April 1994, Mr. McCoy testified during a deposition taken during the ASLB proceeding that plant procedures did not require notification of Mr. Farley. See ASLB Memorandum and Order (Motion to Reopen Discovery), dated November 9, 1994.

¹⁰ The GPC emergency planning procedures in place at that time did require Mr. Farley to be contacted. The applicable Plant Vogtle Emergency planning procedures is VNS-EP-04 (Exhibit 125). Pursuant to Section 4.1.1 of this procedure, the On-Call Project Manager must refer to the "Corporate Emergency Telephone Directory" and must notify four identified groups of personnel: (1) Director of Corporate Response; (2) Senior Corporate Management; (3) Public Information Manager; and (4) Joint Owners. Intervenor Exhibit 125 at p. 9. The "Corporate Emergency Telephone Directory," identifies the "Call Out Lists," and sets forth instruction as to who within a given list is to be notified. Intervenor Phase I Exhibit 126 at pp. 79-80. The Call-Out List for the On Call Project Manager is found at pages 81-83. Listed in descending order under the heading "Georgia Power Corporate Management" are 1) Joseph M. Farley; 2) R.P. McDonald; 3) W.G. Hairston; 4) A.W. Dahlberg; 5) J.T. Beckham; and 6) C.K. McCoy. The procedures clearly demonstrate that Mr. McDonald correctly testified that Mr. Farley was to be contacted and that the 2.206 petition response was correct in this regard.

GPC was faced with either admitting that the 2.206 petition was correct or that Mr. McCoy lied during his deposition. Faced with this dilemma, Mr. Hairston issued a letter to the director of NRC's Office of Nuclear Reactor Regulation on August 30, 1994, claiming that Mr. McCoy's deposition testimony was correct and that the 2.206 petition response was false because plant procedure did not require that Mr. Farley be contacted in the event of a crisis situation.

GPC made a materially false statement to NRC in either the April 1, 1991 2.206 petition response or in the August 30, 1994 letter of George Hairston.¹¹

Moreover, it also became clear during the course of the ASLB proceeding that GPC either made a materially false statement to NRC concerning the existence of training materials covering corporate emergency or submitted a false statement to NRC in response to an Order issued by the ASLB. Consider the fact that both Mr. McDonald and Mr. McCoy testified as to the existence and retention of this training material, ASLB Tr. 1565-66, 1571 (McCoy); Tr.

¹¹ A review of Mr. McCoy's testimony demonstrates a total lack of credibility. Mr. McCoy first asserted that the Corporate Emergency Telephone Directory was "not a part of a procedure" but merely a handy "reference to find phone numbers;" and that it was "not a required document by any NRC regulations, and it's not even a procedure. It is simply an aid to find phone numbers." Tr. 1575-76; 1592 (McCoy). Under cross examination Mr. McCoy contradicted himself when he admitted that the "mobile phone numbers, home phone numbers, beeper numbers" needed to respond to an emergency were only contained in the Emergency Telephone Directory. Tr. 1592 (McCoy); and because the Corporate Emergency telephone directory changes could only be issued upon obtaining Mr. McCoy's signature authorization. See Intervenor Exhibit 126 at pp. 1, 6, 11, 16, 21, 26. Mr. McCoy also asserted that the addition of Mr. Farley's name to the list was a secretarial error. Tr. 1611 (McCoy). Intervenor's Demonstrative aid B demonstrates a pattern concerning Mr. Farley's addition to the list. Prior to Farley becoming Executive Vice President, Nuclear for the Southern Company and Southern Company Services, he was excluded from the list. When the list was issued thereafter Mr. Farley was placed at the top of the list and Mr. Dahlberg was moved from the third position to the fourth. For the next 6 revisions, from June 1989 to August 1990, there are no changes in the top 4 positions. But following the filing of the 2.206 petition in September, 1990, the list was altered such that Mr. Dahlberg was placed into the 2nd position. Finally, upon Mr. Farley's retirement on May 26, 1992, Mr. Dahlberg was placed at the top of the list until he was promoted to President of The Southern Company and was dropped from the list. The addition and deletion of names follows a pattern and cannot be said to be linked to a secretarial error.

1419-1421 (McDonald), to the Letter of John Lamberski to ASLB, dated November 16, 1994.¹²⁷

iii. *Misrepresentations Pertaining to the Selection of SONOPCO project Vice Presidents (McCrary and Long)*

Georgia Power stated in its October 3, 1991 Response to the 2.206 petition that there is no inconsistency in the testimony Mr. McDonald gave during the Fuchko and Yunker and Hobby cases concerning the selection of Messrs. Long and McCrary. (ASLB Intervenor Phase I Exhibit 79, p. 4). This is repeated in Mr. McDonald's prefiled testimony, where he states that his 5/7/90 Hobby deposition testimony did not contradict his testimony in the Fuchko and Yunker DOL proceeding. McDonald p. 11-12. But the record before us demonstrates that Mr. McDonald did provide inconsistent testimony.

Mr. McDonald first testified about his involvement in the selection of Messrs. McCrary and Long in December, 1988, when he was deposed during the Fuchko and Yunker DOL proceeding. At that time Mr. McDonald testified as follows:

Q: Who selected the administrative and technical services Vice Presidents...What person selected those people, the people in those positions?

A: I don't know.

Q: So you did not select them.

A: No.

Q: Who are the Vice-President for those services?

A: Charles McCrary and Lewis Long.

¹²⁷ On November 9, 1994, the ASLB issued an Order requiring Georgia Power to serve copies of "all relevant procedures used at Vogtle from 1988 to present [and] all training materials that Georgia Power used for the purpose of assuring the proper execution of the relevant procedures", (Order at 5) (emphasis added)(footnote omitted). The November 16, 1994, Letter in response claimed that "Georgia Power has identified no training materials for the procedures described above, other than the procedures themselves which are exercised during emergency drills."

Licensee can produce the necessary training records to resolve whether Mr. McDonald's or Mr. McCoy's testimony is false. Until the records are produced, the NRC should consider Mr. McCoy's testimony to constitute a false statement.

Q: And Charles McCrary is Vice-president for what?

A: McCrary? Administrative Services.

Q: Okay. How about Lewis Long, is technical services?

A: Yea. Now let me qualify my statement, in saying that I don't know. The selection of those people is under the authority and responsibility of the Southern Company Services. I imagine in the normal course of events that selection is officially made by the President of Southern Company Services. There may have been another arrangement that I am not aware of, but I think that that was true.

McDonald 12/23/88 Mosbaugh DOL Dep. at pp. 12-13 (emphasis added).

The next time he testified about the selection process was when he was deposed during the Hobby DOL proceeding in May, 1990. This testimony was inconsistent with that presented during the Fuchko and Yunker proceeding. Where before he asserted that he had no knowledge of the selection process and "imagined" that the "responsibility" and "authority" rested elsewhere, Mr. McDonald now testified that he alone selected both Mr. Long and Mr. McCrary for their positions and personally requested the Southern Company Services Board of Directors to elect them to these positions:

Q: Were you involved in the selection of Mr. Long as Vice President of Technical Services?

A: For that position, yes.

Q: Were you involved in the selection of Mr. McCrary for Administrative Services?

A: Yes.

Q: Other than the Board of Directors who else are you aware of who had a role in the selection of Mr. Long?

A: No one that I know of.

Q: Just you?

A: Well, I might have discussed it other people but I was the one who requested the he be considered for that position by the Board of Directors.

Q: And as to Mr. McCrary--

A: Same.

McDonald Hobby DOL Dep. at pp. 12-13 (May 7, 1990).

During the licensing proceeding Mr. McDonald was questioned about the selection of Messrs. McCrary and Long. This time his explanation was inconsistent with both the Hobby and Yunker and Fuchko deposition testimony. He confessed that there was a selection board established to review candidates for the position of Vice President of Administrative Services. ASLB Tr. 1276 (McDonald); that this Board consisted of Mr. McDonald, Mr. Farley, Mr. Tom Nunnely and Mr. Jack Causy, id.; that the board determined that Mr. McCrary would be the best candidate to fill the position; and that a representative of the selection board advised Mr. Franklin (SCS's CEO) of the selection. ASLB Tr. 1276 (McDonald).

After the hearing even GPC was forced to admit that "Mr. McDonald was not able to adequately explain why, during his December 1988 deposition in Yunker and Fuchko, he wasn't sure who had recommended Messrs. Long and McCrary to the SCS Board of Directors." See ASLB GPC's Post Findings of fact and Conclusions of Law, dated February 13, 1995 at p. 169 fn. 55. Yet, NRC Staff steadfastly denied any inadequacy to Mr. McDonald's testimony¹³

¹³ DD-97-06, at pp.A-40-41 asserts that:

In Issue 27, Intervenor alleges that GPC's October 3, 1991, response to the Petition inaccurately states that Mr. McDonald's testimony concerning the selection of Messrs. McCrary and Long given in the Yunker and Fuchko DOL proceeding was not inconsistent with his testimony in the Hobby DOL proceeding.

During the licensing transfer hearing, Mr. McDonald testified that his answers were different, and were not contradictory, because the questions were different. In the Yunker and Fuchko proceeding, when he was asked who selected Messrs. McCrary and Long for their positions in the SONOPCO Project, he understood the question to be who was ultimately responsible for referring them to the Board of Directors, and he replied he was not sure but assumed it was the President of Southern Company Services. In the Hobby case,

(continued...)

In sum, NRC Staff failed to acknowledge that: 1) Mr. McDonald testified on December 23, 1988, that he did not select Messrs. Long and McCrary and he could only "imagine" that the "selection is officially made by the President of Southern Company Services" but "[t]here may have been another arrangement that I am not aware of;" 2) On May 7, 1990, Mr. McDonald significantly altered this testimony by asserting that he may have discussed the selection of Mr. Long and Mr. McCrary with others, but he was the person who selected them for their positions and that he personally made the "request" to the SCS Board that McCrary and Long be elected as Vice Presidents; and 3) before the ASLB Mr. McDonald was able to provide detailed testimony about the establishment of a "review board" and that this review board recommended to the SCS Board that McCrary and Long be elected. Obviously, Mr. McDonald was well aware of the selection process when he testified in the Fuchko and Yunker proceedings but nonetheless made false and misleading statements concerning his involvement and the identity of the individuals involved in the selection process.

¹³(...continued)

he was asked if he was "involved" in selecting them and, since he had been involved with recommending them, gave an affirmative reply. McDonald at 11-12.

In light of the differences in the questions posed, the evidence does not support the conclusion that GPC's response of October 3, 1991, is inaccurate.

Based on the scope of the actual testimony presented, as outlined above, DD-97-06 failed to properly analyze the scope of the testimony and totally ignored the fact that Mr. McDonald made false statements during the course of the Yunker/Fuchko proceedings. This represents another example of NRC Staff's incomplete and inaccurate analysis of the facts and the extent to which it shaded its findings in support of GPC.

3. NRC Staff failed to acknowledge that the December 10, 1991 Response to the 2.206 Petition Contains a Material False Statement Concerning the Meaning of Tape 71 although this fact was prominently briefed by the Intervenor during the course of the licensing proceeding.

Georgia Power asserted in its December 10, 1991 Response to the 2.206 petition that "Tape No. 71[] indicates that Mr. Hairston was not a participant during the April 19th, 1990 telephone conference call..." This statement represents a materially false statement made with total disregard for the truth. The record demonstrates that NRC Staff was aware of this fact but failed to address this matter in DD-97-06. The facts pertaining to this materially false statement are as follows.

Georgia Power prepared a partial transcript of Tape 71 and included it in its December 10, 1991 response to the 2.206 petition. This segment concerned a conversation held between Mr. Mosbaugh ("ALM") and Mr. Aufdenkampe ("P"). Based on this segment, Georgia Power asserts that Mr. Aufdenkampe did not believe Mr. Hairston was a participant to the "big conversation" referred to as "Call A." Yet, listening to the segment of Tape 71 identified by GPC clearly confirms that Mr. Mosbaugh and Mr. Aufdenkampe both agreed and acknowledged that Mr. Hairston did participate in the conference call. During the ASLB proceeding Mr. Aufdenkampe testified unequivocally that the intent and meaning of the conversation he was having with Mr. Mosbaugh was that Mr. Hairston was a participant to the conference call.^{14/}

^{14/} Mr. Aufdenkampe testified that: 1) Tape 71 in no way indicates that either he or Mr. Mosbaugh believed that Mr. Hairston was not a participant in the late afternoon conference call; 2) during the conversation Mr. Mosbaugh emphatically stated that Mr. Hairston was a participant; 3) he agreed with Mr. Mosbaugh that Mr. Hairston did participate in the late afternoon conference call; and 4) the portion of the tape relied upon in Intervenor Phase II Exhibit 75 to indicate that Mr. Hairston was not a participant on the call cannot possibly stand for that assertion. ASLB Tr. 5421-5425 (Aufdenkampe).

GPC intentionally or with reckless disregard singled out a portion of one of the Mosbaugh tapes and attempted to parade it around as vindicating its position that Mr. Hairston was not a participant to the April 19, 1990 conference call when, in fact, the tape segment actually indicated that Mr. Hairston was a participant to the conference call.

Moreover, the record indicates that Georgia Power elected to alter a tape transcript by changing an emphatic statement into a question and submitted this altered transcript into the ASLB hearing record. The facts pertaining to this alteration and deception — which NRC Staff chose to ignore — are as follows:

On May 17, 1995, Georgia Power submitted its pre-filed testimony for Mr. Aufdenkampe which included reference to the Transcript of Tape 71. The pre-filed testimony is as follows:

Q. DID MR. MOSBAUGH RAISE THE ISSUE OF THE DIESEL STARTS STATEMENT WITH YOU AFTER APRIL 19, 1990?

A. Yes. Based on tape recordings that Mr. Mosbaugh made of many of our conversations, I know that we discussed the issue on Tape No. 71, which apparently was made on April 27, 1990. The transcript of our conversation on Tape 71, attached hereto as Exhibit F, is an accurate account of that discussion....

Aufdenkampe Phase II prefiled testimony at 14, ll. 14-20 (emphasis added).

Exhibit F [GPC Phase II Exhibit 32] is a transcript version of Tape 71 GPC prepared on June 30, 1992. According to this "accurate" transcript of the conversation, Mr. Mosbaugh is alleged to have asked Mr. Aufdenkampe in a questioning voice whether Mr. Hairston was on the conference call.¹⁵ This version provides Georgia Power with an adequate rationalization to

¹⁵ This transcription provides:

AUFDENKAMPE: What George told me over the phone --

MOSBAUGH: George Who?

AUFDENKAMPE: Bockhold.

(continued...)

assert that, if Mr. Mosbaugh asked if Mr. Hairston was on the conference call as a question, then it was reasonable for Georgia Power to rely on this segment of the tape to demonstrate that there was a question in both Mr. Mosbaugh's and Mr. Aufdenkampe's mind as to whether Mr. Hairston participated in the conference call. However, the record establishes that before GPC II-23 was submitted into evidence, Georgia Power had twice prepared and submitted transcript excerpts of Tape 71 (Intervenor Phase II Exhibit 75, dated December 10, 1991; Intervenor Phase II Exhibit 116 dated December 18, 1992) indicating that Mr. Mosbaugh's comment "They were all on there" was an affirmative statement indicating his belief that Mr. Hairston in fact participated in the conference call.

Moreover, Mr. Aufdenkampe testified about Tape 71 before the ASLB hearing as follows:

Q And when Mr. Mosbaugh states on [Intervenor's Phase II] Exhibit 75, Page 3, second line from the top, they were all on there, is he questioning you or is he making that as a statement of fact? Didn't he have enough knowledge to make it as a statement of fact?

A That appears to be a statement of fact.

Q And -- and you don't respond to it as if it's a question, do you?

A No, I don't respond as if it were a question.

¹⁵(...continued)

MOSBAUGH: When?

AUFDENKAMPE: Before we issued the LER.

MOSBAUGH: Yes.

AUFDENKAMPE: We had a big conversation on those numbers with George Hairston --

MOSBAUGH: Yeah.

AUFDENKAMPE: Not Hairston, Bill Shipman.

MOSBAUGH: They were all on there?

GPC II-32 at pp. 5-6

- Q Okay. Now I'm going to call your attention to Intervenor's [Phase I] Exhibit 116...Page 14...And does that paragraph stand for the proposition...that Mr. Mosbaugh was not a participant during the final stage of the telephone conference call when the LER language was finalized?
- A Well, it says in part, "We also do not believe that Allen Mosbaugh was a participant during the final stages of the telephone conference call when the LER language was finalized. See E.G. Mosbaugh Tape 71."
- Q And if you would now look at the -- Page 50 of this exhibit...[D]o you recognize this as an excerpt of Tape 71?
- A It appears to be an excerpt of Tape 71 with a lot of bracketed -- additional bracketed statements in it.
- Q And if you'd look in the middle of it you'll see again Mr. Mosbaugh is quoted as saying, "They were all on there," period. Do you see that?
- A Yes, I do.
- Q Now, on Exhibit F at Page 6, Line 4 to your testimony, do you see that same sentence, "They were all on there"?
- A Yes.
- Q But instead of a period this time there's a question mark, isn't there?
- A Yes.
- Q Did you put that question mark there?
- A No.
- Q Did you verify if that was a question?
- A In general I don't recall, in reviewing any of the tapes, trying to put in punctuation.
- Q If I told you that at this section Mr. Mosbaugh raised his voice and emphatically stated, "They were all on there," do you recall hearing that when you listened to the tape?
- A I -- I have no specific recollection of that.

Q Well, I'm going to play this portion, and I guess maybe the best way to do it is have the recorder next to you so at least you can hear it, and I'm going to ask you to listen specifically to Line 4, the words, "They were all on there," and tell me whether you can tell if Mr. Mosbaugh raises his voice when he says that and emphatically states it as an affirmative statement rather than a question.

* * *

(Whereupon, a portion of a tape recording was played to the witness.)

* * *

Q Did you hear Mr. Mosbaugh raise his voice to the point that the tape player went into distortion?

A ...Al Mosbaugh did raise his voice during that particular sentence saying that, "They were all on there."

Q And would you categorize his commentary as emphatically stating they were all on there?

A I think that's a correct characterization. It was more an exclamation than a question.

Q Okay. So then Page 6 of Exhibit F to your prefiled testimony is in error because it uses a question mark, is that correct?

A Yes.

ASLB Tr. 5428-5432 (Aufdenkampe)(emphasis added).

Mr. Aufdenkampe directly refuted the pre-filed testimony prepared by Georgia Power -- which was deliberately aimed at misleading the ASLB to conclude that Mr. Mosbaugh was unsure about Mr. Hairston's participation when the tape rather demonstrated that he emphatically stated that he knew Hairston was a participant.

In sum, not only does GPC's Response to the 2.206 Petition contains a material false statement concerning the meaning of Tape 71, but GPC knowingly submitted a false transcription of Tape 71 into the ASLB record with the intent to deceive the ASLB. The record establishes that NRC Staff was fully aware of these events but failed to include any mention of them in DD-97-06.

4. NRC Staff's failure to modify the NOV to include a violation pertaining to false statements concerning Diesel Air Quality

On February 13, 1995, NRC issued a final severity level II violation ("NOV") to GPC for the submission of numerous false statements pertaining to a false diesel start count made to NRC to justify restarting plant Vogtle following a site area emergency which resulted when a diesel generator failed to restart. No violation was issued with respect to false and misleading information pertaining to diesel air quality. Following the issuance of the NOV, a hearing conducted before the ASLB. At the close of the record before the ASLB, NRC Staff issued proposed findings reaffirming the fact that false statements were made with respect to the diesel start count. Moreover, based on the record made before the ASLB, NRC Staff concluded that GPC management also made false and misleading statements concerning diesel air quality. See NRC Staff Proposed Findings of Fact and Conclusion of Law in the Form of an Initial Decision ("NRC FOF"), dated December 12, 1995 at pp. 18, 86-87, 110. Yet, NRC Staff has failed to institute any, let alone meaningful, enforcement action for the submission of false statements to NRC concerning air quality. This failure on the part of NRC Staff is particularly troubling inasmuch as, whereas the initial NOV included a violation concerning air quality, GPC chose to deny that it made any false statements about diesel air quality and defended itself by submitting false and misleading information to NRC concerning the accuracy of the air quality statements. This course of conduct sufficed to misled NRC Staff to the point of withdrawing violations pertaining to air quality.^{16/} DD-97-06 fails to acknowledge the actions taken by GPC to mislead

^{16/} Petitioner incorporates the findings contained between pages 261-309 of Intervenor's Final Statement of fact and Conclusions of Law, Dated November 30, 1995, filed in the ASLB proceeding, and specifically calls NRC's attention to the issues pertaining to: 1) false, misleading, and incomplete statements made to NRC during the April 3, 1990 IIT Conference Call; 2) Misleading Statements
(continued...)

NRC and derail the proposed violation concerning misleading air quality statements. NRC Staff's failure to reinstate the violation on air quality is an obvious portrayal of NRC Staff's insincere treatment of the 2.206 petition and further demonstrates the extent of NRC Staff's ineffectual enforcement action.

5. Violations of 10 C.F.R. 50.7

On August 4, 1995, the U.S. Secretary of Labor ("SOL") issued an order finding that Georgia Power, and its top management (including A.W. Dahlberg)¹²⁷ terminated Marvin Hobby because he raised a concern to upper management that GPC had illegally transferred

¹²⁶(...continued)

Concerning Self-Reporting of Unsatisfactory Dew Point Readings made in GPC July 31, 1994 Reply to Notice of Violation Bockhold's prefiled ASLB Phase II testimony; 3) concealing the existence of a back-up dew point analyzer during the April 6, 1990 IIT Conference Call and improperly asserting to NRC that the high dew point readings were attributable to a defective analyzer (VP-2466); 4) Bockhold's submission of false testimony before the ASLB Concerning the basis of his statement during the April 6 IIT conference that VP-2466 was defective; 5) failing to advise NRC about VP-1114 readings during the April 9, 1990 IIT conference call; 6) excluding VP-1114 measurements from the dew point data transmitted to NRC on April 11, 1990; 7) inaccurate responses to ASLB interrogatory questions GPC filed on August 8, 1994; 8) false and misleading statements contained in the April 9, 1996 Confirmation of Action Response letter (including attributing high dew point readings to a defective instrument); 9) failing to investigate common cause factors for multiple dew point analyzer misreadings; 10) failure to initiate M&TE program requirements, including the failure to record "As Found" data; 11) the failure to adequately investigate a deficiency card issued on April 4, 1990; and 12) the failure of the Site Area Emergency Critique Team to analyze air quality.

Petitioner notes that NRC Staff did not undertake a separate investigation nor engage in discovery after the false statements were brought to light by the ASLB Intervenor. This matter should be forwarded to NRC's Office of Investigations and, upon the completion of an investigation, NRC Staff should issue the appropriate level violation and take meaningful action.

¹²⁷ At the time Mr. Dahlberg was President and CEO of Georgia Power Company. He currently holds the position of President, CEO and Chairman of the Board of Directors of The Southern Company, and is a member of the board of directors of GPC. Mr. Dahlberg was identified by name as having direct involvement with the illegal discrimination of both Mr. Hobby and Mr. Mosbaugh. The Southern System's decision to promote Mr. Dahlberg coupled with the complete failure to take any meaningful corrective action to address the deficiencies within the corporate culture that promoted and caused the illegal discrimination of high-level managers to occur, provides a sufficient basis to deny the GPC's request to transfer its licensed activities to another Southern Company subsidiary.

control of its nuclear operations to the SONOPCO project management team. The Secretary determined that the sole motivating factor for the decision to terminate Mr. Hobby was due to his whistleblowing activity.^{18/} The Secretary of Labor ordered Mr. Hobby to be reinstated and ordered the payment of monetary damages. In addition to terminating Mr. Hobby, the SOL also determined that top executives within GPC further discriminated against Mr. Hobby by stripping him of his employee badge and parking privileges, and restricting his access within GPC. This action occurred two months before his termination was to take effect and immediately after GPC learned that Mr. Hobby was going to file a whistleblower complainant against the company.^{19/} This course of action telegraphed a clear and obvious message throughout the Southern System

^{18/} Additionally, on November 20, 1995, the Secretary of Labor found that a second high level whistleblower, Mr. Allen Mosbaugh, was illegally terminated by Mr. Dahlberg in violation of Section 210. For a second time, the Secretary determined that the sole motivating factor for the illegal discrimination against Mr. Mosbaugh was due to his protected activity. The SOL's findings in Mosbaugh v. GPC, Cases No. 91-ERA-1 and 91-ERA-11, is the final determination on this matter (the parties entered into a settlement of this matter that did not include vacating the SOL's decision on the merits, and the case was dismissed upon the SOL's acceptance of the terms of that settlement).

^{19/} A core underlying purpose of Congress' enactment of § 210 of the Energy Reorganization Act, 42 U.S.C. §5851, was "to prevent the Nuclear Regulatory Commission's channels of information from being dried up by employer intimidation." Deford v. Secretary of Labor, 700 F.2d 281, 286 (6th Cir. 1983). Also see In Re Five Star Products, Inc., 38 N.R.C. 169, slip op. at 12 (Oct. 21, 1993). Any interpretation of § 5851 must be read "in conjunction with" these explicit statements of congressional purpose. Egenrieder v. Metropolitan Edison Co./GPU, 85-ERA-23, order of remand by SOL, at 7-8 (April 20, 1987). The U.S. Department of Labor "does not simply provide a forum for private parties to litigate their private employment discrimination suits" because the legislation was enacted to "expose not just private harms, but health and safety hazards to the public." Polizzi v. Gibbs & Hill, Inc., No. 87-ERA-38, order of SOL, at 2-3, (July 18, 1989). Also see, Doyle v. Hydro Nuclear Services, 89-ERA-22, D& of SOL, at p. 6 (March 30, 1994)(The clear "congressional intent" behind § 5851 is to "protect public health and safety"); accord, Brock v. Richardson, 812 F.2d 121, 124 (3d Cir. 1987).

that whistleblower activity within GPC's management ranks will not be tolerated.^{20/} No action on the part of Georgia Power has lessened the chilling effect flowing from this conduct.^{21/}

The Director's Decision is deficient in that it does not require Georgia Power to offer Mr. Hobby reinstatement when it found that Georgia Power terminated him for engaging in protected activity. Pursuant to 10 C.F.R. § 50.7(c), NRC Staff is authorized to and should revoke or suspend SONOPCO's license until GPC and SONOPCO management acknowledge that they violated 10 C.F.R. §50.7 and take the only meaningful corrective action available to rectify the

^{20/} The chilling effect and corporate culture surrounding the raising of concerns to NRC and chilling employees from engaging in protected activity is further evidenced by testimony presented by Mr. Farley during the ASLB proceeding. Mr. Farley testified that it was "inappropriate and out of order" to communicate allegations of intentional wrongdoing to NRC. ASLB Tr. 1838-39 (Farley). Mr. Farley communicated his philosophy throughout the SONOPCO project. Tr. 1832 (Farley). The corporate culture and chilling effect is further exemplified by Mr. McCoy's totally inappropriate statement to plant Vogtle managers that they should essentially deceive "external" entities, such as the NRC, about the real conditions at the plant site. Mr. McCoy stated to the plant Vogtle management that:

...we need to grow to the point that we're just like a family and, you know, we may fight among ourselves but when externally, we go out and someone brings up something externally or something like that, and uh, we defend our reputation and we all support each other and we all have a part to do and that sort of thing. I think, I think that's the worst thing that [inaudible] picked up on. We have not matured to the point that we all feel like a solid team and we talk to each other about our problems and that sort of thing. But when somebody external to us says, uh, "what do you think about those corporate guys," or something like that, you tell them "you got the best corporate organization in the world." That's what you tell them externally, then you get on the phone (laughing) and say, "you guys didn't support us or whatever the problem is." I think you all understand the context of what I'm talking about.

McCoy ASLB Phase Rebuttal Ex. A.

^{21/} A similar message was transmitted at the time of Mr. Mosbaugh's termination. Indeed, when Mr. Mosbaugh was notified of the decision to terminate him, GPC management requested that a lower-level manager, Mr. John Aufdenkampe, would be brought into a private meeting so he could "witness" the illegal termination. GPC's decision to require a lower-level manager to attend the termination meeting when he had no special knowledge of the facts or events concerning the decision is typical of the tactics and flavor employed to chill managers from engaging in protected activity or challenging management's actions.

chilling effect stemming from the illegal discrimination -- the offer of reinstatement to Marvin Hobby.

The Level 1 violation issued by the NRC is a fiction that has no deterrence value. The NRC took so long to act that the statute of limitations expired and fines could not be imposed. Therefore, the violation has no meaning to GPC. Georgia Power has not acknowledged that it violated §50.7. In fact, GPC has stated publicly not only that it plans to appeal the Secretary of Labor's decision in Hobby but also that it believes the company's actions against him were "lawful and appropriate." (See Attachment 2-News articles).

Every day that Georgia Power refuses to reinstate Mr. Hobby constitutes a continuing violation of 10 C.F.R. § 50.7. To date, the Department of Labor's issuance of the Hobby decision and NRC's issuance of a Level 1 Violation in conjunction with GPC's termination of Mr. Hobby has not resulted in any meaningful change in the underlying flaws within GPC's — and the Southern System's -- corporate culture. Mr. Hobby must be reinstated or offered reinstatement, for any meaningful change to take place. Therefore, until this occurs, the license should be suspended. GPC and Southern Nuclear do not possess the required character and willingness to abide by regulatory requirements as is needed to run plant Vogtle's nuclear operations.

6. False statements made in response to Petitioner's 2.206 petition allegations

The Director did not take into consideration, in making his decision, the fact that GPC and Southern Nuclear employees made significant and numerous false and misleading statements in its attempt to deny that GPC illegally transferred control of its nuclear licenses to the SONOPCO project. Based on the facts discussed below, NRC is required to issue a NOV for each and every false, misleading or incomplete statement GPC and Southern Nuclear managers issued in response to the September 11, 1990, 2.206 Petition and its amendments.

A. Falsely asserting in the 2.206 petition response that Mr. Hobby was given a Phase I organization chart.

Georgia Power asserts in its April 1, 1991 2.206 Petition Response at page 6 of Attachment 1 that:

Mr. Hobby has omitted material information provided to him prior to the submission of the Petition. A Phase I organizational chart was provided to Mr. Hobby on May 15, 1989 attached to a memorandum from Mr. Fred Williams in response to an April 26, 1989 memorandum from Mr. Hobby. See Exhibit 17. Thus, as early as April 1989, the role of Mr. Farley had been explained to Mr. Hobby (a manager) by Mr. Williams (an officer of the Company).

(Intervenor Phase I Exhibit 48, p. 6).

The assertion that the May 15, 1989 memorandum depicted the Phase I organization or explained Mr. Farley's role in the SONOPCO project is false. The wording of this paragraph is particularly troubling because it implies that Mr. Hobby intentionally omitted material information, when it turns out this information was never provided to him.

Mr. McDonald testified that the reason he stated that Mr. Hobby made this material omission is because a Phase I organization chart was provided to Mr. Hobby on May 15th by Mr. Williams which purportedly explained Mr. Farley's role. ASLB Tr. 1453 (McDonald). However, Mr. McDonald further testified that the chart which is attached to the letter, See ASLB License Transfer Stipulations, at Ex. 35, was not a Phase I organization chart. ASLB Tr. 1454-1458 (McDonald). Mr. McDonald then admits that the statement that Mr. Hobby received a Phase I organization chart was a mistake. ASLB Tr. 1459-60 (McDonald).

When questioned further about the organizational chart Mr. McDonald's testimony becomes convoluted:

- Q: Is -- I think you've already testified that the memo attached to Mr. Williams' May 15th memo is not a Phase I organization chart, correct?
- A: Now I've got to -- let me go back and make sure I'm clear here. That corresponds to the Phase I organization relationships that I had with Mr. Dahlberg. I had that relationship from the day I went to work for him on

April 1988 until I retired. So that is a true depiction of my relationship and reporting responsibilities during that period of time.^{22/}

Q: Okay. Well, taking that to be the case, then --

BOARD EXAMINATION

CHAIRMAN BLOCH: Is it a Phase I organization chart?

THE WITNESS: Well, see, I don't see this Phase I organization chart talked to in here. I beg your pardon. It is a Phase I organization chart. I think what -- I think what that means -- I think that means that Mr. Williams knew very clearly what was being asked, and he was asked who did he report to, so all he did is pick up the chart which had been approved for Georgia Power and give it back to them and says, 'This is for our reports. This is the Phase I reporting where he is reporting during Phase I,' which he was correct. It is not a -- it is not a -- it is a reporting relationship between me and Mr. Dahlberg for -- during Phase I.

ASLB Tr. 1464-1465 (McDonald)(footnote added).

This explanation is not satisfactory because the assertion that all Mr. Williams' had to do was provide an organizational chart depicting Mr. McDonald's reporting relationship to Mr. Dahlberg is not responsive to Mr. Smith's underlying request that the organizational chart depict the entire organization.^{23/}

GPC and Southern Nuclear managers made a material false statement in the April 1, 1991 Response to the 2.206 petition by stating that the May 15, 1989 memorandum depicted the Phase I organization and explained Mr. Farley's role in SONOPCO. The NRC should take the required

^{22/} Mr. McDonald's assertion that the chart depicted the relationship Mr. McDonald had with Mr. Dahlberg "from the day I went to work for him on April 1988 until I retired" is untrue. Although Mr. McDonald's reporting relationship to Mr. Dahlberg did not change between April 1988 and the time Mr. McDonald retired (i.e., he never reported directly to Mr. Dahlberg), even GPC must admit that this assertion is false inasmuch as Mr. McDonald did not report directly to Mr. Dahlberg between April and December of 1988.

^{23/} Mr. Smith requested information regarding the SONOPCO reporting chain up through the board of directors. He requested this information for Messrs. Hairston, McDonald and Farley. He specifically asked how Mr. Farley fit into the picture. When asked if it would be correct to say that information he received was not responsive to this request, he replied affirmatively. Smith Dep. at 25-26. When asked if by looking at the chart if he could tell what entity Mr. Farley was working for, Mr. Smith replied, "Doesn't say." *Id.* at 26.

action and issue a violation for this material false statement. The DD-97-06 fails to do so and is therefore deficient in its enforcement value.

B. Falsely asserting in the 2.206 petition response that Exhibit B-2 of the "U-1" SEC filing constituted a Phase I organization chart

Georgia Power made a false assertion in its April 1, 1991 response to a 2.206 petition by claiming that "Exhibit B-2 of [the SEC U-1 filing] was a copy of the Phase I organizational structure" which commenced operation "[o]n about November 1, 1988." Intervenor Phase I Exhibit 48 at p. 3. Unfortunately, the organization that commenced functioning on November 1, 1988, when the SONOPCO project was formed, is not depicted in Exhibit B-2 to the U-1 filing.²⁴ To the contrary, the SONOPCO project organization began functioning on November 1, 1988, as depicted in the Phase II organization identified in the U-1 filing (Exhibit B-3). Georgia Power asserts that the organization depicted in Exhibit B-3 did not begin to function until after Southern Nuclear was incorporated.²⁵ This assertion is false because the Phase I organization depicted in the B-2 chart actually represents the status of GPC's nuclear organization before the SONOPCO project was formed, while the B-3 chart represents the organization after the SONOPCO project organization came into existence on November 1, 1988. Prior to November 1, 1988, Georgia Power radically reorganized its nuclear operations; it established two nuclear project organizations. First, Mr. McDonald became executive Vice President of Georgia Power while he continued to retain his position as executive Vice President of Alabama Power; Mr. Hairston became Executive Vice President of Georgia Power and he too retained his prior position as Senior Vice President of Alabama Power. Under Mr. McDonald's and Mr. Hairston's guidance, Georgia Power's nuclear department was split in half. Where a single department previously managed both the Hatch and Vogtle plants, a separate Hatch project was formed headed by a separate Vice President, Mr. Beckham; and a separate Vogtle project was formed headed by a Mr. McCoy.

²⁴ Exhibits B-2 and B-3 to the SEC filing can be found as part of Joint Stipulation Exhibit 6.

²⁵ The difference between Exhibits B-2 and B-3 to the U-1 filing boil down to: 1) the B-2 chart does not depict the existence of "SONOPCO," where the B-3 chart does; and 2) the B-2 chart does not depict a technical services organization and an administrative services organization, whereas the B-3 chart does. See ASLB Joint Stipulation Exhibit 6 (or Hairston Phase I Prefiled Testimony Exhibits C & D).

Before the U-1 filing was made in June of 1988, Georgia Power's organization was functioning as depicted in Exhibit B-2. This management structure was thereafter reorganized on November 1, 1988, when Georgia Power employees were relocated to the SONOPCO project. At that point in time Mr. McCrary was functioning as the head of the SONOPCO project's administrative service branch; Mr. Long was functioning as the head of the SONOPCO project's technical services branch, and Mr. Farley was functioning as the head of the entire SONOPCO project.^{26/} Soon after November, 1988, Mr. Farley personally conducted the weekly staff meetings of the SONOPCO Project without the participation of non-double-hatted GPC employees, a SONOPCO Project Board commenced functioning with significant powers over nuclear operations and GPC double-hatted nuclear employees winded down their involvement with the GPC Management Counsel. After November of 1988, the GPC Management Counsel, contrary to GPC's assertions in their under-oath response to the Hobby/Mosbaugh 2.206 petition, ceased having any significant input or control over nuclear operations.

As such, the April 1, 1991 2.206 petition response erroneously asserts that Exhibit B-2 to the U-1 filing depicts a phase I organizational chart and falsely portrays Mr. Farley's role and management authority within the SONOPCO project. Again, the Director's Decision fails to take action against GPC for this false statement and is therefore deficient.

C. Georgia Power's Denial of Hairston's Participation in the April 19, 1990 Conference Call

The Director's Decision at p. 94 states that "[t]he failure to identify various participants on the calls indicates faulty recollection of GPC employees (shown to be inaccurate by the Intervenor's recordings) . . . [p]erformance failures, not deception, appears to be the likely

^{26/} Mr. Hobby's counsel recently obtained a document from GPC identifying Mr. Farley as representing the "SONOPCO senior management team" and stating that Mr. Farley would begin implementing employee evaluations within his organization. See Attachment 1 appended hereto at (Bates No. 004567). Farley's role as the heading the SONOPCO management structure is consistent with the September 21, 1988, pronouncement of Mr. Addison that Farley would provide "leadership and insight" to the SONOPCO project. Joint Stipulation Exhibit 10. Mr. Meier, the SONOPCO project Director of Strategic Planning, testified that an April 27, 1989 article appearing in a Georgia Power weekly publication accurately stated that Mr. Farley functioned as "the head of the SONOPCO project." Meier Dep. pp. 31-32. Moreover, Mr. Meier testified that in Phase I that the Technical Services and Administrative branches were staffed and reported to Mr. Farley in his capacity as Executive Vice President of Nuclear. *Id.*, at pp. 48-49.

cause." The following facts will demonstrate the Director's Decision to be erroneous and that GPC employees did not have faulty recollections. They will also show that GPC tried to cover up the fact that it submitted a false statement regarding the issue of Mr. Hairston's participation on the April 19, 1990 conference call.

The initial September 11, 1990 2.206 petition alleged that Georgia Power submitted inaccurate information regarding Mr. Hairston's participation in the April 19, 1990, late afternoon phone call which revised the wording of LER-90-006. The April 1, 1991, sworn response failed to acknowledge or admit that Mr. Hairston was a participant to any portion of the April 19, 1990 conference call. GPC's April 1, 1991 response indicated that there was a single conference and, in footnote 3 thereto, altogether denied that Mr. Hairston participated in that conference call.^{27/} This assertion was knowingly false when made.

i. October 3, 1991 Clarification

By way of a letter dated August 22, 1991, NRC requested Georgia Power to respond, under oath, to allegations raised by petitioner in a supplement filing to the September 11, 1990 2.206 petition. Therein, petitioner alleged, *inter alia*, that the April 1, 1991 2.206 petition response filed by Georgia Power was materially false because it claimed Mr. Hairston was not a participant to the late afternoon conference call. Georgia Power, under the signature of R. P. McDonald, filed its response on October 3, 1991. See Intervenor Phase II Exhibit 74. Therein, Georgia Power states that the "foundation for the footnote's statement that Mr. Hairston did not participate in the telephone conference call which finalized the LER late on April 19, 1990" was its earlier response to "questions #3 and #5 [of the "white paper"] as well as Mr. Hairston's own

^{27/} The relevant text and footnote 3 to the April 1, 1991 Response is as follows:

Additional diesel generator starts had occurred subsequent to April 9, 1990 (the date of the GPC meeting in Atlanta with NRC representatives), and the final April 19th LER wording stated that each diesel engine had been started "at least 18 times each."^{3/}

^{3/} The wording was reviewed by corporate and site representatives in a telephone conference call late on April 19, 1990. Although Mr. Hairston was not a participant in that call, he had every reason to believe the final draft LER presented to him after the call was accurate and complete.

recollection." *Id.*, at p. 4. Because the only conference call referred to in questions 3 and 5 of the "white paper" is "Call A" (i.e., the call where Mr. Bockhold was a participant), the conference call necessarily being referenced in footnote 3 had to be the call in which Mr. Hairston was a participant.^{28/}

ii. December 10, 1991 Clarification

On December 10, 1991, Georgia Power submitted a supplement to its October 3, 1991 submission. Intervenor Phase II Exhibit 75. This supplemental submission states in relevant part:

GPC's October 3, 1991 supplemental response sets forth the basis of GPC's April 1, 1991, statement regarding the Senior Vice President's lack of participation in a telephone conference call late on April 19, 1990, which finalized LER 1-90-006. In late October, 1991...GPC obtained cassette audio tapes...Tape No. 71[] indicates that Mr. Hairston was not a participant during the April 19, 1990 telephone conference call when language concerning the emergency diesel generator start counts was finalized in the LER. The following is a transcript of a portion of this tape which contains a discussion between Mr. Mosbaugh ("ALM") and another participant ("P") on the April 19th conference call.

- ALM: I think there is a high probability that there is a problem with their statement [in LER 90-06 concerning diesel generator start information].
- P: What George told me over the phone--
- ALM: George Who?
- P: George Bockhold--
- ALM: When?
- P: Before we issued the LER.
- ALM: Yeah.
- P: We had a big conversation on those numbers with George [Bockhold], uh, [George] Hairston--

^{28/} "Call A" refers to the telephone call in which Mr. Bockhold participated; "Call B" refers to the last phone conversation between the site and corporate offices in which Mr. Bockhold was not a participant.

- ALM: Yeah.
- P: --or not Hairston, [Bill] Shipman.
- ALM: They were all on there.

* * *

As can be observed from the highlighted portion of this excerpts, the participant indicated that Mr. Shipman and not Mr. Hairston participated in conversations which finalized the LER. This is consistent with the collective recollection of participants during the August 1990 special inspection, as reflected in [the white paper]...

Intervenor Phase II Exhibit 73 at pp. 3-4 (emphasis and brackets in original). This submission reconfirms that the conference call being referred to was "Call A" because that is the only "big conversation" in which "George Bockhold" participated.^{29/}

Georgia Power provides four bases to show that its failure to indicate Mr. Hairston's involvement in the April 1, 1991 2.206 petition response was innocent. GPC Phase II FOF ("GPC FOF") 418. First, Georgia Power claims it did not have access to the tape recording of the conference call. Georgia Power did not need access to the tape recordings to know who participated in the conference call -- it only needed to speak to the participants of the call because both Mr. Shipman and Mr. Aufdenkampe have admitted to knowing that Mr. Hairston was a participant.

Second, Georgia Power asserts that the error merely replicated "the same information" previously provided to Georgia Power in its August, 1990 white paper and that error was the result of "imperfect memories." GPC FOF 418. As noted above, the memories of Georgia Power's own witnesses were not imperfect. Moreover, Mr. McDonald claimed that he took steps

^{29/} Significantly, the quoted portion of this response reads: "...Mr. Hairston was not a participant during the April 19, 1990 telephone conference call..." (emphasis in original). This phrase is consistent with Georgia Power's earlier communications with NRC indicating that there was only one conference call occurring on April 19th.

to verify the accuracy of the 2.206 petition response.^{30/} Thus, whatever errors led to the error in the White Paper, they should have been detected rather than repeated.

Third, Georgia Power asserts that the error was innocent because Mr. Hairston was not on the portion of the call "where the language 'comprehensive test program' was apparently coined." GPC FOF 418. This is unpersuasive because Mr. Hairston's statements during the call are highly significant and directly relate to the diesel generator start issue.^{31/}

In sum, GPC made a materially false statement when it denied that Mr. Hairston participated in the conference call referenced to in footnote 3 to GPC's December 10, 1991 reply to petitioner's 2.206 petition allegations. Again, the NRC has failed to take action against GPC for this false statement. Therefore DD-97-06 fails to deter the licensee's from participating in this type of behavior in the future.

D. Performance Indicators

The Director's Decision is deficient in that it fails to take into consideration the sworn prefiled testimony of Michael Barker when determining Mr. McDonald took instruction from Mr. Dahlberg. There is clear evidence to demonstrate that Mr. Farley reviewed and approved the testimony to be submitted to the PSC, which failed to include a proposed alternative

^{30/} Mr. McDonald testified that prior to submitting the response to the 2.206 petition he asked Mr. Shipman if he recalled Mr. Hairston being on the call. Mr. McDonald repeated this assertion at the hearing. ASLB Tr. 11116 (McDonald). Mr. Shipman testified that there never was a time when he did not recall that Mr. Hairston participated in that call and that he is on record as such. ASLB Tr. 11322 (Shipman).

^{31/} Georgia Power also points to the Vogtle Coordinating Group's conclusion that Georgia Power had a reasonable basis to conclude that Mr. Hairston was not on the late afternoon conference call referred to in footnote 3 of the December 10, 1991 supplemental response of Georgia Power. GPC FOF 418. The sole basis of the Coordinating Group's analysis is that Footnote 3 could be construed as referring to "Call B" rather than "Call A." Based on the record made before the ASLB, the Coordinating Group's analysis should be abandoned. The "White Paper" response was apparently not considered by NRC Staff.

performance indicator.^{32/} The evidence also demonstrates that GPC's April 1, 1991 Response concerning this matter is false and misleading.

Georgia Power states in its April 1, 1991, 2.206 Response that the resolution of a dispute between Mr. Dahlberg and Mr. McDonald concerning GPC's presentation of performance indicators to the Georgia Public Service Commission (PSC) was a specific example depicting Mr. McDonald's reporting relationship and who was in control of nuclear operations. This represents the only example GPC provided to the NRC in its 2.206 response.^{33/}

Reliance on the performance indicator disagreement and representing that this incident demonstrates that Mr. McDonald reported to Mr. Dahlberg, constitutes a false and misleading statement. The sworn prefiled testimony of Mr. Barker demonstrates that Mr. McDonald did not follow Mr. Dahlberg's instructions; that McDonald continued to interfere with Mr. Barker's attempt to work on performance indicators; and that Mr. Farley reviewed and approved the testimony to be submitted which failed to include a proposed alternative performance indicator. GPC's reliance on the performance indicator issue represents a material false statement because it was introduced into the 2.206 petition response in an effort to persuade the NRC that Mr. McDonald reported to Mr. Dahlberg on all matters concerning nuclear operations. By August of 1989, Mr. Dahlberg and Mr. McDonald were in total disagreement on how to proceed before the PSC. Mr. Dahlberg decided that Georgia Power should prepare its version of an acceptable performance indicator. Counter to Mr. Dahlberg's judgment, Mr. McDonald determined that the

^{32/} This testimony is not a part of the formal ASLB hearing record, however it was available to Staff. (Attachment 3).

^{33/} The 2.206 Response states:

A specific example demonstrating that Mr. Dahlberg is, indeed, responsible for and in control of GPC matters concerning plants Hatch and Vogtle is reflected in Hobby v. GPC. In August 1989, Mr. McDonald had a disagreement with Mr. Dwight Evans concerning testimony to be filed with the Georgia Public Service Commission on the subject of nuclear plant performance standards. Trial Tr. 365-68, 380-81. That disagreement was resolved by Mr. Dahlberg in an August 10, 1989 meeting during which Mr. Dahlberg directed Mr. McDonald to take certain actions.

company would not prepare an alternative to the company and would not allow SONOPCO project personnel to work on an alternative indicator. Dahlberg 17; McDonald 15. Mr. Farley also opposed providing an alternative performance standard to the PSC. ASLB Tr. 1109 (Dahlberg).

On August 10, 1989, Messrs. Dahlberg, McDonald and Evans met to resolve the dispute. The discussion was heated to the point where Mr. McDonald broke a rung in the chair in which he was seated. See ASLB Phase I Hobby Prefiled testimony at p. 43; ASLB Tr. 1105 (Dahlberg); ASLB Tr. 1504 (McDonald). At the conclusion of the meeting Mr. McDonald was told to prepare an acceptable performance indicator as an alternative to the indicators presented by PSC staff. After August 10th a meeting was held at the SONOPCO project. In attendance were Messrs. Farley, McDonald, Johnson, Barker and Hicks, as well as just about all of the top management of the SONOPCO project. Hobby DOL Johnson Dep. p. 26. Mr. Johnson testified that Mr. McDonald stated that he was not going to allow SONOPCO project personnel to prepare an alternative performance indicator, Hobby pp. 43-44, and that the decision not to work on an alternative performance indicator was jointly made by Mr. McDonald and Mr. Farley during the course of the meeting. Johnson Dep. p. 38-39. This event was confirmed by Michael Barker, who discussed the matter with Mr. Hobby. Hobby p. 44. Moreover, Mr. Johnson spoke with SONOPCO project's nuclear performance engineers, Mr. Barker and Mr. Hicks, and both confirmed that they were instructed not to do any more work on an alternative performance standard and that this directive came from SONOPCO project upper management. Johnson Dep, p. 29.

Georgia Power submits that Mr. McDonald did, in fact, follow Mr. Dahlberg's direction. According to Mr. Dahlberg, Georgia Power provided rebuttal via a consultant, Mr. Fitzpatrick, who suggested modifications to the PSC staff's proposed performance standard by identifying "five areas where the proposed standard needed to be changed." GPC's post-hearing brief at p. 136 (citing to PSC Tr. pp. 3523-64).³⁴ Georgia Power states that "when it became clear that the

³⁴ Georgia Power suggests that Intervenor was confused by the company's public opposition to such standards while at the same time the company proposed changes via a consultant, Mr. Fitzpatrick who testified before the PSC. *id.*, at pp. 136-137. This explanation is lacking because the witnesses who testified on behalf of Intervenor did not obtain their knowledge from public sources, but were rather the
(continued...)

PSC was prepared to adopt such standards, Mr. Fitzpatrick's testimony provided the basis for Georgia Power to identify the necessary changes in its brief submitted to the Public Service Commission." *Id.*, at p. 137.

Georgia Power's explanation is lacking and contradictory to testimony presented by Mr. Fitzpatrick during the PSC hearing. That hearing transcript indicates that the Commission asked Mr. Fitzpatrick if Georgia Power had engaged him to present the Commission with a performance standard based on his theory "or have they just engaged you to tear down the GDS program? . . . Yes or no, do you have a program for us?" to which Mr. Fitzpatrick responded "the answer is no, given the time that was available." Intervenor Phase I Exh. 141 at p. 3578. When the Commission pressed further by asking "have they engaged you to do that, to present to us sometime today, or sometime in the future?", he responded that "it hasn't been discussed with me." *Id.*, at 35798. The Commission stated that it believed that it was the company's responsibility, if it doesn't agree with the GDS program, to come forward with a program that meets and removes the defects. *Id.* The Commission further stated that there had been interest in this for two years, "the staff has worked on it, and the company has worked on it, but only on the side of what's wrong with somebody else's and they haven't come in with one of their own." *Id.* (emphasis added). The Commission then asked Mr. Fitzpatrick how long it would take for him to put together performance standards for plants Vogtle and Hatch, to which he replied: "[I]f we were to start today, in six months." *Id.* at 3583. The Commission concluded that Georgia Power must not be interested in proposing performance standards because it had over two years to do so and had not. *Id.*

According to Mr. Fitzpatrick's own testimony during the PSC hearing, licensee is now mischaracterizing the purpose of that testimony.

Licensee's assertion that "Mr. Fitzpatrick's rebuttal testimony critiqued the PSC's proposal and identified five areas where it needed to be changed" does not explain why an alternative performance standard was not available at the hearing for submission to the Commission. That Georgia Power may ultimately have submitted an alternative performance

¹⁴(...continued)
actual GPC employees tasked to work on this issue and attended strategy meetings.

standard after the close of the record as an attachment to its brief does not adequately explain why the alternative was not available for inclusion before the hearing ended.^{35/} Moreover, Mr. Dahlberg testified before us that on September 12, 1989, he testified under oath to the Georgia PSC that Georgia Power had no intention of filing an alternative performance standard. ASLB Tr. 1118-19 (Dahlberg). In this respect, Mr. Dahlberg testified as follows:

Q: Mr. Dahlberg, do you remember being questioned September 12, 1989 before the Public Utilities Commission, State of Georgia, under oath and asked the following question, "The company" meaning Georgia Power, "generally was aware as early as March and certainly in April and the May time frame of this year that the staff was going to address the performance standard issue in this case, were they not?" Your answer was, "That's correct." Do you remember that testimony?

A: Yes sir.

Q: And then there was a follow up question. "And the company has not filed a performance standard in this case and has no intention of doing so, is that right?" And your answer was, "That's correct."

A: Correct.

Q: And in response to this and other questions on this same day, you informed the Public Utilities Commission that Georgia Power would not be proposing the alternative performance standards which were an issue in that proceeding, isn't that correct?

^{35/} Significantly, Intervenor Exhibit 46 includes a September 15, 1989 memorandum identifying that the first draft of the major elements of a Georgia Power proposed performance standard was not prepared until September 15, 1989. *Id.*, at p. 1. This memo was not copied to Mr. Dahlberg, rather it was copied to Messrs. Farley, McDonald and the entire SONOPCO project executive staff.

A: I believe that's correct, yes.

* * *

Q: And do you remember ever seeing a transcript of the September 15, 1989 proceeding of the Public Utilities Commission in which Commissioner Andrews stated, "I would just comment that it appears to me that the company has knowingly and willfully put the Commission to the choice of the staff's performance plan or none. And at this point in time I believe the Commission is going to have to live with that and the company is going to have to live with it." Do you remember that?

A: Yes.

ASLB Tr. 1119-20 (Dahlberg) (emphasis added).

Georgia Power did not present a straight forward explanation as to why the company was not prepared to present at the hearing an alternative performance indicator. NRC should take the testimony presented before the PSC at face value (GPC had an obligation to be candid before the PSC). In sum, that testimony establishes that Mr. Fitzpatrick never consulted with Georgia Power about preparing an alternative performance indicator; that Mr. Dahlberg was unprepared to present an alternative when directly asked to do so by the PSC. It stands to reason that, if the SONOPCO project would not allow its staff to work on an alternative performance standard, which is the testimony of Mr. Hobby and Mr. Johnson, the reason Mr. Dahlberg could not present an alternative at the hearing was because the expertise and resources needed to work on this project were instructed not to do so by Mr. McDonald, with the concurrence of Mr. Farley.

In sum, the only factual example presented by GPC in its response to the 2.206 petition erroneously asserts that Mr. McDonald followed Mr. Dahlberg's instructions following the August 10 meeting. It was not Mr. Dahlberg's authority and instruction to work on an alternative performance standard for submission but it was rather the PSC's reaction to GPC's

failure to present alternative performance standard that caused the SONOPCO project management to hastily prepare an alternative performance indicator. Hence, the NRC should take action against GPC for this false and misleading statement. The failure of the Director to take any action demonstrates to the industry that it is acceptable for a licensee to submit such false and misleading statements in response to a 2.206 petition. Therefore the Director's Decision lacks any deterrence value.

7. Conclusion

For the above reasons, Marvin B. Hobby, by and through counsel, respectfully requests a review of DD-97-06.

Respectfully submitted,



Michael D. Kohn
Attorney for Mr. Hobby

cc:

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Southern Company Services
the southern electric system

David W. Connell
Director
System Productivity and Quality

April 12, 1996

Messrs. E. L. Addison
J. M. Farley
E. B. Harris
A. W. Dahlberg
D. L. McCrary
P. J. DeNicola
A. M. Gignilliat, Jr.
H. A. Franklin

Gentlemen:

Attached are two documents relative to the Leadership Task Force recommendations. These documents were prepared in response to your request to document and clarify the decisions made during the March 12, 1990 and the March 26, 1990 Management Council meetings. I have attempted to recreate the meetings with some help from Ted Spangenberg and others; however, your review of these documents is important to ensure that the information outlined is accurate.

The first document is a reprint of the Southern Company Leadership Profile. It should reflect all the changes and suggestions forwarded to this office. I view this document as a final product at this point unless you see the need to pursue refinements.

The second document contains the decisions which were made, the key discussion points, and planned next steps relative to each of the six Leadership Task Force recommendations. I apologize for the length of this document, but I wanted to be sure there are no misunderstandings as this process moves forward.

Please let me know if you have any questions, concerns, or if I can assist you in any way.

David

cc: Bob Andrews
T. S. Spangenberg

bc: Dianne Davenport



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Attachment 1

Confidential

Preliminary Draft for Review
(Content Not Approved)

April 11, 1990

Management Council Meetings

March 12, 1990 and March 26, 1990

Decisions Made, Key Discussion Points, and Status and Planned Next Steps

Relative To The

Leadership Task Force Recommendations

004563
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8/12/96

Recommendation 1: Leadership Profile

- a. Adopt a leadership profile.
- b. Adopt the leadership profile recommended by the Leadership Task Force.

Decisions Made

- a. The concept of using a common leadership profile for the Southern Company to drive a Leadership Development Process was approved.
- b. Each Management Council member agreed to review the Southern Company Leadership Profile proposed by the Leadership Task Force and provide his comments to David Connell within one week of the March 26, 1990 Southern Company Management Council meeting. The comments provided were to deal with significant problems in the profile or its structure not minor wording changes.

Key Discussion Points

- a. The issue of "the customer" was not clearly addressed in the Southern Company Leadership Profile.
- b. The issue of "teamwork" should be elevated in the Southern Company Leadership Profile.
- c. It should be acknowledged that no manager within the Southern Company possesses all the skills/competencies outlined in the Southern Company Leadership Profile. It is only a target. The skills/competencies needed for success vary with the specific position.
- d. The leadership profile for executive level positions may need to be different from the profile used for supervisory positions.
- e. The final form of the Southern Company Leadership Profile must be consistent with the Southern Company Vision document.
- f. The Southern Company Leadership Profile and its contents may very well change over time as experience is gained with its use in the system.

Status and Planned Next Steps

- a. The Southern Company Leadership Profile was finalized on 4/10/90 based on input received as of that date from each CEO. Additionally, this version of the profile does reflect the issues identified in the Key Discussion Points section. This proposed final version is attached and is clearly labeled as Revision 0 and dated 4/10/90.

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- b. The Southern Company Leadership Profile is considered complete. After April 23, 1990 the profile will be printed in quantity and distributed to managers and human resources professionals throughout the system unless problems with the document are identified.
- c. Upon final approval of the Southern Company Leadership Profile, a communications effort will be initiated (Southern Highlights, speeches, etc.) and the skills/competencies outlined in the profile will begin to be incorporated throughout the system in the management training/education programs (i.e. General Management Forum on May 1-3, 1990), management assessment processes, the high-potential identification process, and the selection process.

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Recommendation 2: 360-Degree Feedback Process

Implement a 360-degree feedback process with the top 150 managers across the system.

Decisions Made

- a. The 360-degree feedback process concept was approved for testing in a pilot program. The process presented included the following components:
 1. Each CEO will participate in identifying the individuals for whom data will be collected in the first phase.
 2. The management/leadership data collected for an individual will come from a variety of constituencies including the direct boss, the boss's boss (in some cases), the boss's peers, peers/colleagues, clients/customers (in some cases), and subordinates. Each CEO may wish to participate in selecting those who will provide data for the individual.
 3. The data collected for an individual will remain totally confidential unless the person for whom the data was collected chooses voluntarily to share it.
 4. A feedback package comprised of the analyzed data and interpretive information will be presented to each individual for whom data has been collected by an outside professional psychologist in a one-on-one confidential session.
 5. The firm of outside psychologists selected to collect the data, analyze it, and provide feedback to individuals is Personnel Decisions, Inc. of Minneapolis, MN. The cost of their services will be approximately \$1000 per person. The value of an outside resource is total confidentiality, objectivity, and the perspective gained through work in dozens of other companies and industries.
 6. After collecting data on a wide range of individuals within the system, the outside psychologists will develop a leadership assessment of the Southern Company management team which highlights strengths and developmental needs on an aggregate basis. Additionally, the data collected from this process will be used by the outside psychologists to evaluate, on an aggregate basis, the effectiveness of the Assessment Process (Recommendation 3) and the Identification of Talent Pools Process (Recommendation 5).

7. The instrument used to collect the data on individuals will be a customized one based on the structure and content of the Southern Company Leadership Profile, and heavily influenced by a well tested instrument, the Executive Success Profile. The use of existing items from the Executive Success Profile will allow the psychologists to compare Southern Company data collected in this process to normative industry data, thus improving the value of their analysis.
8. The Human Resources professionals of each company will be involved in the administration of the process within their companies so that at a point in time (a second phase) they can assume responsibility for implementation within their own companies. It is anticipated that train-the-trainer sessions will be conducted to prepare internal professionals to deliver the feedback. The computer software used in producing the feedback reports may also become available to each company's Human Resources function for implementation below the top management team.
 - b. Joe Farley (SONOPCO senior management team), Allen Franklin (SCS Management Council), and Paul DeNicola (MPCo senior management team) expressed their intent to begin implementation of the Southern Company 360-Degree Feedback Process, top down, within their organizations. Also, Ed Addison will participate as an assessee.
 - c. At this time, each of the other companies is free to implement the Southern Company 360-Degree Feedback Process at the appropriate pace for their situations and at a functional level if they so desire. There is not a requirement that each company implement the Southern Company 360-Degree Feedback Process. Further consideration of such a requirement will not occur until the pilot programs are evaluated.
 - d. David Connell and his staff have been assigned responsibility to coordinate this process for the system.

Key Discussion Points

- a. The data gathered for individuals during this process must be kept confidential and pure. The data should never be forced into the Assessment Process (Recommendation 3), the Identification of Talent Pools Process (Recommendation 5), or the Selection/Placement Process (Recommendation 6). One infraction on this point anywhere in the system will ruin the integrity of the program throughout the system.
- b. With the use of 360-degree feedback processes such as the one recommended by the Leadership Task Force, there is a trade-off which must be considered. Most recognized experts state clearly that the accuracy and comprehensiveness of feedback is strongly related to the length of the instrument used to collect the information: however, the longer instruments tend to meet with resistance. This trade-off must be examined after the pilot programs are evaluated.

Status and Planned Next Steps

- a. The president of Personnel Decisions, Inc., Dr. Lowell Hellervik, attended the Southern Company Executive Forum on March 29-30, 1990 in an effort to get to know various Southern Company senior managers.
- b. Dr. Dianne Davenport from David Connell's staff will be coordinating the implementation of this process for the Southern Company.
- c. The Southern Company 360-Degree Feedback Process instrument has been finalized. There are 185 questions on this instrument.
- d. The orientation to the process within SONOPCO began on April 7, 1990.
- e. The process within the other companies and for Ed Addison will begin as soon as the orientation can be scheduled.

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8/12/96

Recommendation 3: Assessment Process

- a. Assess top 150 managers using the Leadership Profile.
- b. Name a Process Manager.

Decisions Made

- a. The decision was made to apply the Southern Company Assessment Process to a limited number of individuals within the Southern Company during 1990 as opposed to all the top 150 managers as outlined in this recommendation. At a minimum, those identified as Executive High-Potentials (EHi-Po's) in the implementation of Recommendation 5, Identification of Talent Pools, will participate in the process.
- b. Each company CEO may choose to apply this process to as many other officers, managers, and/or supervisors as he desires.
- c. The responsibilities of the System Process Manager for this recommendation have been assigned to Dr. Dianne Davenport from David Connell's staff for the first year. Dr. Jim Tanner will work very closely with Dr. Davenport throughout the implementation of this recommendation.
- d. If companies want to use an external psychologist in their assessment processes, each is free to use Dr. Tanner personally or one of several other firms.

Key Discussion Points

- a. Concern was expressed about the amount of paperwork, time, and attention required to apply the proposed process to all officers, managers, and supervisors as outlined in the recommendation.
- b. The Assessment Process should be based on the Southern Company Leadership Profile so that the same competencies and behaviors are emphasized in this process and in the Southern Company 360-Degree Feedback Process.
- c. The Assessment Process will eventually develop data which feeds the Management Educational Program (Recommendation 4), the Identification of Talent Pools Process (Recommendation 5), and the Selection/Placement Process (Recommendation 6).
- d. Since emphasis will be placed on preparing and selecting the best people from the system for critical top jobs, consistency of the processes and the forms employed must be ensured or it will be impossible to review all system candidates on the same basis.

- e. In the foreseeable future the use of third-party psychologists in many assessment processes will be necessary to ensure objectivity.

Status and Planned Next Steps

- a. The development of assessment forms, similar to those distributed at the March 12, 1990 Southern Company Management Council meeting, and a methodology for the assessment process is underway. The final assessment process guidelines will be created by the Process Managers and other human resource professionals from each system company. These guidelines will be an output of The Process Manager Training Conference which is being planned now.
- b. With Dr. Tanner's assistance, several other firms of psychologists who can deliver quality services to the Southern Company will be identified. A system contract will be developed for the services of these qualified vendors to ensure competitiveness and adherence to the Southern Company standards. Direct contact with these firms by system personnel will be encouraged when needs arise.

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Recommendation 4: Management Educational Program

- a. Approve the philosophy of a Southern Company Management Education Program.
- b. Commission development of a work plan for the Management Educational Program.

Decisions Made

- a. The philosophy of a Southern Company Management Education Program was approved. This philosophy states:
 1. Training/education is important to the development of a highly productive work force.
 2. The need exists for an effective Southern Company Management Education Program. This program should enhance the development of leaders by providing events and educational activities which:
 - (a) Provide forums where system participation can occur.
 - (b) Serve as a catalyst/support mechanism for change by:
 - aa. Ensuring the consistency of the "message" being delivered within the system, alignment with system strategies, and building a sense of oneness;
 - bb. Providing for information dissemination throughout the system; and,
 - cc. Providing needed business knowledge.
 - (c) Eliminate unnecessary duplication and cost in the system.
- b. The request to move forward with the development of a work plan to study the issue of training/education within the Southern Company was approved. This work plan included the following steps:
 1. Assess current development efforts.
 2. Determine requirements and needs for key jobs.
 3. Develop curriculum and events to address needs.
 4. Outline resources (people, facilities, dollars).
 5. Establish a measurement/evaluation system.
 6. Bring an implementation plan back to the CEO's for a decision.
- c. David Connell and his staff have been assigned responsibility to coordinate the development of the work plan.

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Key Discussion Points

- a. The Southern Company Management Council indicated its desire to see the study address the issue of re-evaluating the moneys already being spent and not necessarily adding additional dollars to the training/education process.
- b. The Leadership Task Force suggested that the work plan study team be comprised of training managers from around the system and supported by limited time consulting services of an individual with experience in this area.
- c. It is anticipated that this study can be accomplished within approved SCS budget levels.

Status and Planned Next Steps

- a. Jack Bowsher, an outside resource, has been selected to provide oversight and assistance to the system study team through limited participation during the next six months. Mr. Bowsher retired from IBM last year as Director of Education. Several years ago, he conducted a study at IBM similar to the one outlined in this document and now assists companies who are interested in re-designing their training/education programs.
- b. Cindy Green from David Connell's staff will serve as the project manager of the study. She is in the process of establishing the system study team.
- c. The study will be completed the 4th quarter of 1990 at which time the findings and definitive recommendations will be reported to the Southern Company Management Council.

004572
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Recommendation 5: Identification of Talent Pools

- a. Southern Company Management Council categorize top 150 managers into talent pools.
- b. Southern Company Management Council develop and implement high-potentials' development plans.
- c. Name a process manager.

Decisions Made

- a. The Management Council approved the concept of identifying talent pools for the system and within their companies. The exact methodology for accomplishing this in 1991 and beyond will be discussed later.
- b. The 1990 talent identification process is:
 1. Each CEO will develop a list of individuals within his company who fit the definition of Executive Hi-Potential (EHi-Po's). These names will be sent to Bob Andrews by the middle of April for consolidation. The definition of Executive Hi-Potential is:
 - (a) Exemplifies the Southern Company Leadership Profile
 - (b) Capable of advancing to the Senior Officer Level within 5-7 years with appropriate development
 - (c) Capable of handling cross-functional assignments
 - (d) Willing to relocate for development

Generally, the search for individuals being considered for this pool will be limited to those currently at position levels 17 and above.

2. Each CEO may use whatever means he chooses to designate these individuals as long as the definition of EHi-Po proposed by the Leadership Task Force is used in the process.
3. The final talent pool size for 1990 should be approximately 25-30 individuals to keep the process manageable the first year. Therefore, if the total number of names submitted to Bob Andrews exceeds this range, time will be allotted to screen the list at a regularly scheduled Southern Company Management Council meeting.
4. The Southern Company Assessment Process (Recommendation 3) as proposed will be applied to those individuals identified in item 3 above. The outputs from the Southern Company Assessment Process will be a list of each individual's strengths/skills, areas for development, and a suggested action plan to develop the individual.

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90-ERA-30
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5. An two-day event will be scheduled which contains the following three stages:

(a) At the first stage of this event, a concise presentation of current demographics and expected changes within the position level 19 and above jobs within the Southern Company will be made. This presentation will communicate the magnitude of the task facing the system with respect to preparing managers to assume increased levels of responsibility.

(b) At the second stage of this event, the assessment information on each of the 25-30 EHi-Po's will be presented by their CEO to the other Southern Company Management Council members for verification. The output for the second stage of the event will be the following:

- Those EHi-Po's known and verified by the Council
- Those EHi-Po candidates known but not verified by the Council
- Those EHi-Po's not known by the Council whom the Council should get to know
- Creation and clarification of accountability for implementing the development plans of these individuals

(c) At the third stage of this same event, certain key jobs (maybe 3 at this meeting) which are expected to be vacated within the next 5 years will be identified. The requirements for each of these jobs will be outlined including needed strengths from the profile and job/functional experiences or knowledges desired. The Southern Company Management Council will identify the best candidates for these few jobs from the list of EHi-Po's and will cross check requirements of the jobs and the assessment of the individuals to establish their developmental needs.

6. The Southern Company Management Council as a team will outline, at a minimum, developmental plans for those EHi-Po's slated as potential successors for the key future vacancies identified and will make a commitment to initiate a specific number of developmental moves in 1990.

7. After this event feedback will be provided to the 25-30 individuals verified by the Southern Company Management Council. The feedback will include the individual's identified strengths and developmental needs. Additionally, these individuals will be told that their developmental assignments have been discussed by the Southern Company Management Council (i.e. they are part of a first group that the Council is examining for future assignments.)

c. The responsibilities of the System Process Manager for this recommendation have been assigned to Dr. Dianne Davenport from David Connell's staff for the first year. Dr. Jim Tanner will work very closely with Dr. Davenport throughout the implementation of this recommendation.

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Key Discussion Points

- a. In the foreseeable future the use of third-party psychologists in this process will be necessary to ensure objectivity.

Status and Planned Next Steps

- a. The dates for the event described above have been set for July 23-24, 1990.
- b. The details of this process have been discussed with Dr. Jim Tanner and he is currently involved in the planning of this event.
- c. After each company names a process manager, a Process Manager Training Conference will be conducted for company Process Managers and other human resources professionals so that each company can begin developing processes compatible with this system process.

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Recommendation 6: Selection/Placement Process

- a. Implement interim selection process.
- b. Adopt proposed selection committee guidelines.
- c. Establish requirements for key system management positions.
- d. Name a Process Manager.

Decisions Made

- a. An Interim Selection Process was approved. This process applies to position level 19 jobs and above and includes the following steps:
 1. When a position is created or becomes available, the specific job knowledge/skill requirements are identified.
 2. The position is evaluated to determine its suitability as a developmental assignment for a Hi-Potential.
 3. The Process Managers conduct a search throughout the Southern Company.
 4. The Process Managers cross check the job with the pools of Hi-Po's identified by the system and within companies for a possible match.
 5. The Process Managers and selecting manager establish an appropriate screening process.
 6. When a final list of candidates is identified, the appropriate selection committee is established.
 7. The Process Managers ensure that the assessment data is available for the selection meeting.
 8. The selection committee meets, reviews assessment data, and recommends a prioritized list of candidates to the selecting manager.
 9. The selecting manager makes final decision.

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- b. The recommended guidelines outlining the composition of selection committees were approved with strong recognition that the guidelines are targets, not inflexible laws and not all companies have to or should be represented on selection committees at these levels. It was agreed that the System Process Manager working with each CEO and/or each company's Process Manager would move forward this year and evaluate this concept during implementation. The guidelines for the composition of selection committees approved by the Southern Company Management Council with the stated caveats are:

Position Levels

Selection Committee

24 and Above

Southern Company Management Council
System Process Manager

19-23

System Selection Committee Identified by
the Southern Company Management Council
(collectively, individually, or through
their company Process Manager)
System or Company Process Manager

- c. The responsibilities of the System Process Manager for this recommendation were assigned to Dr. Dianne Davenport from David Connell's staff for the first year. Dr. Jim Tanner will work very closely with Dr. Davenport throughout the implementation of this recommendation.
- d. If companies want to use an external psychologist in their selection processes, each is free to use Dr. Tanner personally or one of several other firms.

Discussion Points

- a. In the foreseeable future, the use of third-party psychologists in many selection processes will be necessary to ensure objectivity.
- b. The potential bureaucracy and the time delays associated with the process outlined in this recommendation should be monitored.
- c. The nature of the screening process outlined in the Interim Selection Process will need to be worked out over time as this is a most critical phase of the selection process.
- d. The objective of modifying the selection process is to select the best person for a job vacancy, not just to create cross-company movement; therefore, care must be exercised in establishing selection committees. Decisionable knowledge of the candidates should be given the appropriate weight in each case.

Status and Planned Next Steps

- a. With Dr. Tanner's assistance, several other firms of psychologists who can deliver quality services to the Southern Company will be identified. A system contract will be developed for the services of these qualified vendors to ensure competitiveness and adherence to Southern Company standards. Direct contact with these firms by system personnel will be encouraged when needs arise.
- b. Several jobs within the system are being filled currently using the process outlined in this recommendation. These are the Vice President - New York position (J. R. Harris) and the Director of Human Resources for SCS (Dennis Eubanks).
- c. The final procedures for this recommendation will be developed by the Process Managers from each system company. This will be a product of the Process Managers Training Conference for process managers and other human resource professionals being planned now.

Rank(R)
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NRC ISSUES SEVERITY LEVEL 1 VIOLATIONS IN VOGTLE WHISTLE-BLOWER CASES

Inside NRC June 10, 1996; Pg 13; Vol. 18, No. 12

Journal Code: NRC

ISSN: 0149-0252

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BYLINE:

Tom Harrison, Washington

TEXT:

Georgia Power Co. now holds two of only three Severity Level 1 violations NRC has given to nuclear power plants since 1980 for discrimination against employees who raised safety concerns.

On May 31, the NRC cited Georgia Power for the violations, the most serious of four NRC violation levels, for discrimination against two employees who raised safety concerns at Vogtle in 1989 and 1990.

Although each violation carries a base civil penalty of \$100,000, the five-year statute of limitations for such action expired while the workers were pursuing complaints and appeals at the Department of Labor (DOL). As a matter of course, the NRC bases its enforcement decisions on DOL findings.

Steve Kohn, attorney for the two employees, dismissed the lack of civil penalties as insignificant compared to the severity of the violations NRC imposed. "We don't know of any other Level ones they've given out. Level twos are rare....Level ones are unheard of."

Actually, according to NRC Region II spokesman Ken Clark, the agency has given 33 Severity Level 1 violations since 1980, when the agency began issuing civil penalties. Seven of the Level 1 violations were at nuclear power plants, but only one aside from those at Vogtle involved discrimination against workers. That was at Tennessee Valley Authority's (TVA) Watts Bar plant, where the NRC fined the federal utility \$200,000 in December 1993 for harassment and intimidation of employees. The agency also issued two Level 2 violations against TVA for employee discrimination but proposed no fine because the statute of limitations had expired.

Most Level 1 violations are at byproduct material users, such as hospitals and radiography firms, and are mostly due to overexposure, Clark said.

The Vogtle violations followed Labor Secretary Robert Reich's decisions last August and November in favor of the former workers. In both cases, Reich overturned administrative law judges' rulings that upheld Georgia Power's actions.

Since the statute of limitations for civil penalties ran out, NRC's enforcement staff can only take the violations into account if similar complaints are upheld in the future. That could result in more severe penalties, said Roger Hannah, another Region II spokesman.

However, Kohn said NRC's old regulations required a plant that received two Level 1 violations to be shut down. Newer regulations give NRC more discretion in taking enforcement actions, he said. "We think when this flushes out, the final enforcement should be severe."

Kohn cited a 1993 edition of the 10 CFR Part 2, Appendix C, which details escalated enforcement actions for similar violations from the date

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of the last inspection or within the previous two years. Issuing an order to modify, suspend or revoke a utility's license through use of a Demand for Information is one of the options NRC has for dealing with a company that has received two Severity Level 1 violations.

Jim Lieberman, director of NRC's Office of Enforcement, said although discrimination is "clearly unacceptable," it's doubtful Vogtle's license will be revoked or suspended because of the two severe violations. "If you had a manifestation of that problem with operator issues and people weren't operating and maintaining the plant right and there was discrimination associated with it, then I could see suspending the license," he said.

The table Kohn referred to is no longer in the federal code and has been changed over the years. Lieberman said the table was an example of escalated actions and was never really used because enforcement for each case is decided on its merits. The NRC takes into consideration the areas in which Severity Level 1 violations occurred, also. For example, a Level 1 violation in discrimination or construction isn't as dangerous as one in reactor operations where a safety system didn't perform as expected.

Also, officials in the Labor Department reached different conclusions on the cases, he said. "Discrimination was found to occur by the secretary. It isn't such a clear-cut case that the lower levels of the DOL found the same thing."

The 1996 edition of the code doesn't include the Appendix C passage Kohn cited, but does say the NRC can mitigate or escalate enforcement sanctions and can apply its full enforcement authority where warranted.

NRC is concerned that the cases took so long that the statute for civil penalties ran out, but a task force's recommendations have improved DOL's investigatory process, Lieberman said. He chaired the NRC review team that asked for the changes, which included transferring investigations from Labor's Wages and Hour Division to the Occupational Safety & Health Administration (OSHA) (INRC, 2 May '94, 1).

Georgia Power said both cases are part of ongoing legal proceedings, so the NRC's enforcement action is premature.

In its notice, the NRC said the violations "are of very significant regulatory concern because they involved acts of discrimination by senior corporate management." The notice also told Georgia Power to describe steps the company would take to make sure its decision to not reinstate the two employees wouldn't have a chilling effect on other employees.

In one of the cases, a Vogtle employee raised concerns that the organizational structure governing the company's operation of its nuclear facilities violated NRC requirements.

Reich found that Marvin Hobby, a former general manager of Georgia Power's Nuclear Operations Contract Administration, was discriminated against when his position was eliminated in 1990 and he was forced to resign. Other acts of discrimination included relocation of Hobby's office, restrictions on his access to the building, and revocation of his executive parking privileges, Reich said.

The plant operating license for Farley has been transferred from Alabama Power to Southern Nuclear Operating Co.--both of which, like Georgia Power, are subsidiaries of the Southern Co., and Southern has long-pending requests to transfer the licensees for Georgia Power's Hatch and Vogtle.

Reich's decision and remand order in August 1995 overturned an
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administrative law judge's November 1991 finding that company actions taken against Hobby weren't motivated by his taking part in protected activities.

In the other case, Reich in November 1995 again reversed an administrative law judge's finding, from October 1992, that Georgia Power didn't discriminate against an employee. Reich said Allen Mosbaugh, former assistant general manager at Vogtle, was engaged in protected activity when he made secret tape recordings of conversations with co-workers in order to gather evidence of safety violations at the plant.

Reich ordered Georgia Power to offer Mosbaugh his job back, give him back pay, reimburse him for his legal expenses, and compensate him for "pain and suffering."

Mosbaugh's case is still before a U.S. District Court judge while Hobby's suit has gone on to the U.S. Court of Appeals for the 11th Circuit, Kohn said.

The remaining disputes in the cases involve whether all the terms of Reich's orders--such as the amount of back wages--have to be settled before the men can be reinstated, Kohn said.

The utility has filed a motion with the Labor Department to reopen the Mosbaugh case, saying there's a significant amount of evidence obtained since the earlier department hearing, said spokesman Tal Wright.

Kohn said he is confident the motion will be dismissed. He also disputed Wright's assertion that Hobby is working on a tentative settlement with Georgia Power.

The utility, which has denied the violations, has 30 days to respond to the NRC.

"The NRC's decision to issue the notices of violation is disappointing and we disagree with them, particularly in light of past Department of Labor administrative law judges' ruling that found Georgia Power was within the law in its handling of the two cases," he said. "Now, more than five years later, solely because Secretary of Labor Robert Reich reversed administrative law judges' rulings in these cases, the NRC has issued the notices of violation."

A U.S. District Court judge in Georgia recently ruled that Reich's order in the Mosbaugh case is not final or enforceable at this time. "We are contesting the Labor Secretary's rulings and if necessary will appeal them at the appropriate time," Wright said. "We believe we will be successful in having the Secretary's decisions reversed."

Wright said the utility's actions have been lawful and appropriate. "We have always encouraged employees to raise concerns related to safety and we will not tolerate any employee, manager or officer who retaliates against or penalizes another employee for the submission or voicing of concerns."

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The Wall Street Journal
Copyright (c) 1996, Dow Jones & Company,
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Wednesday, June 5, 1996

NRC Cites Subsidiary Of Southern in Firing
Of Managers in 1990

The U.S. Nuclear Regulatory Commission cited a unit of Southern Co. for unfair retaliation in the firing of two managers who had raised safety concerns at its Vogtle nuclear power plant in Georgia.

The NRC said the findings, which backed up earlier U.S. Department of Labor rulings, are unusual "because they involved acts of discrimination by senior corporate management." In its rulings, the Labor Department criticized A.W. Dahlberg, now chief executive of Atlanta-based Southern and formerly the head of its Georgia Power Co. unit, which had employed the two managers, Marvin B. Hobby and Allen L. Mosbaugh, who were fired in 1990.

Georgia Power called the NRC's decision "disappointing" and said it disagreed with it, pledging to continue several legal challenges. "We have always encouraged employees to raise concerns related to safety, and we won't tolerate any company employee or officer who penalizes another for the submission or voicing of safety concerns," the company said.

The NRC did not fine Georgia Power, saying the five-year statute of limitations had expired while the two men had pursued their appeals through the Department of Labor. A lawyer for Mr. Mosbaugh said such fines would have only been symbolic, and praised the NRC's decision.

--- INDEX REFERENCES ---

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THE (SO)

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FOCUS - 16 OF 89 STORIES

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Inside N.R.C.

January 8, 1996

SECTION: Vol. 18, No. 1; Pg. 3

LENGTH: 725 words

HEADLINE: WHISTLE-BLOWERS SAY AGENCY SHOULD SUSPEND PLANT OPERATING LICENSES

BYLINE: Dave Airozo Washington

BODY:

Two whistle-blowers locked in years-long battles with Georgia Power Co. and the Southern Nuclear Operating Co. over alleged harassment want NRC to immediately suspend the companies' nuclear plant operating licenses and fine them more than \$ 20-million because, the whistle-blowers say, the discrimination by senior management continues.

Late last week the whistle-blowers, Allen Mosbaugh and Marvin Hobby, were expected to file a so-called 2.206 petition with NRC in which they argue that the agency's own regulations require that the drastic action be taken and the hefty fines meted out. They contend that senior managers of the companies have repeatedly violated NRC whistle-blower protection provisions and that the agency must escalate enforcement action.

Last year, both Mosbaugh and Hobby won Department of Labor (DOL) cases against the companies over alleged retaliation for whistle-blowing. In both cases, Secretary of Labor Robert Reich directed the companies to reinstate the men and ordered payment of other damages.

In mid-December, Georgia Power filed a motion with DOL's Office of Administrative Appeals asking that the record in the Mosbaugh case be reopened and further hearings be held. In the motion, Georgia Power noted that during the DOL proceeding, NRC's Office of Investigations had held on to 76 tape recordings Mosbaugh had surreptitiously made of fellow employees while he was assistant general manager of the Vogtle nuclear plant. OI used the tapes recordings as part of its own investigation into Mosbaugh's allegations of wrongdoing by Georgia Power management. The tapes were not given to Georgia Power until after the record in the Labor proceeding was closed, and Georgia Power now claims that the tapes contain significant information that would have affected Reich's decision.

Georgia Power also plans to appeal Reich's decision in the Hobby case but the proceeding is in limbo at DOL because of the federal government's budget crisis and resulting government employee furloughs, Georgia Power spokesman Tal Wright said January 4.

NRC is already considering "escalated enforcement action" because of the



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Mosbaugh harassment case.

In a draft of the 2.206 petition, the whistle-blowers note that Reich specifically identified A.W. Dahlberg, former Georgia Power president and now president, chief executive officer and chairman of the board of Southern Co. as having had an "active role" in the "illegal" firings of Hobby and Mosbaugh. They charge that the discrimination against Hobby and Mosbaugh, and Georgia Power's refusal to reinstate them, continues to have a "chilling effect" on Georgia Power and Southern Nuclear workers and that the NRC should fine the companies \$ 200,000 a day for each day that Hobby and Mosbaugh are not reinstated.

With the meter running from the date of Reich's decisions, the fine would total \$ 20-million as of January 4.

In their petition, the whistle-blowers also note that George Hairston and Kenneth McCoy, both Georgia Power senior managers, were involved in providing NRC with inaccurate or incomplete information regarding the equipment performance and test results following a 1990 loss-of-offsite-power incident at Vogtle (INRC, 20 Feb. '95, 8).

The whistle-blowers suggest that the repeated involvement of senior officials in these cases reveals a pattern of noncompliance with NRC regulations and that the agency must impose strong sanctions, including the suspension of the operating licenses until the alleged management problem is corrected.

NRC regulations (10 CFR Part 2) do call for progressively stiffer enforcement actions for repeated violations of the same requirements within a two-year period. The agency has already hit Georgia Power with a Severity Level II violation and a \$ 200,000 fine for supplying inaccurate and incomplete information related to the Vogtle incident and, as noted above, is considering more in response to the Mosbaugh case.

Under the NRC guidelines, if a licensee is slapped with two Severity Level II violations within the two-year period, suspension of affected operations should be considered.

"The actual progression to be used in a particular case will depend on the circumstances," the regulations say. "Enforcement sanctions will normally escalate for recurring similar violations."

LANGUAGE: ENGLISH

LOAD-DATE: February 01, 1996



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PREFILED TESTIMONY OF MICHAEL D. BARKER

Q: CAN YOU STATE YOUR NAME AND ADDRESS?

A: Michael D. Barker, 5545 Hillgate Crossing, Alpharetta, Georgia, 30202.

Q: ARE YOU CURRENTLY EMPLOYED?

A: Yes, with the Institute of Nuclear Power Operations ("INPO").

Q: WERE YOU EVER EMPLOYED BY GEORGIA POWER COMPANY ("GPC")?

A: Yes, I began working for GPC on December 27, 1978. I was stationed at plant Vogtle between 1978 and 1987. In July, 1987 up until October 31, 1988, I was located in GPC's corporate offices. On October 31, 1988 I was transferred from Atlanta, Georgia to Birmingham, Alabama as part of the SONOPCO project reorganization. I was stationed in the SONOPCO project until I left the company in April 6, 1990.

Q: WHY DID YOU LEAVE THE SONOPCO PROJECT?

A: I left the company on good terms to run for the United States Congress, Seventh District of Alabama.

Q: BEFORE JOINING THE SONOPCO PROJECT, DID YOU HAVE OCCASION TO WORK WITH MR. HOBBY?

A: Yes. I reported to Mr. Hobby from February, 1988 until I was transferred to the SONOPCO project on October 31, 1988.

Q: WHAT WERE YOUR MAJOR AREAS OF RESPONSIBILITY WHEN YOU REPORTED TO MR. HOBBY?

A: Collecting, trending and reporting performance data to GPC management and various regulatory agencies of GPC's nuclear plants (Hatch and Vogtle); providing performance reports to the co-owners of plants Hatch and Vogtle; and providing research and information for a rate case before the Georgia Public Service Commission ("PSC").

Q: DID THE TRANSFER CHANGE YOUR AREAS OF RESPONSIBILITY?

A: No. I continued to report on the performance of both plant Hatch and plant Vogtle. Shortly after formation of the new SONOPCO organization an engineer, Mr. Ed Hicks, was brought

into the Hatch project who became responsible for plant Hatch performance data. As before the transfer, however, I continued to report information to the co-owners for both Hatch and Vogtle and I continued to do this until I left the company. I also continued to work on rate case related issues for both Hatch and Vogtle both before and after the transfer.

Q: WHO DID YOU REPORT TO AFTER THE TRANSFER TO BIRMINGHAM?

A: Mr. Em Cobb, who reported to Curtis Stinespring, who reported to Bill Shipman, who reported to SONOPCO's Vogtle Project vice president, Mr. McCoy.

Q: HOW WAS THE SONOPCO PROJECT ORGANIZED?

A: It was basically staffed with three different sets of employees, some employees remained employed with Alabama Power Company, some with Georgia Power Company, and some employees became Southern Company Services ("SCS") employees or were already SCS employees. The SONOPCO project itself was divided into five areas: 1) the "Vogtle Project," 2) the "Hatch Project," 3) the "Farley Project," 4) "Administrative Services," and 5) "Technical Services." I was stationed in the Vogtle Project portion of SONOPCO.

Q: DID YOU HAVE AN OPPORTUNITY TO NOTICE IF ANY OF THE GEORGIA POWER MANAGERS WITHIN THE SONOPCO PROJECT DISTINGUISHED THEMSELVES AS A SONOPCO PROJECT AS OPPOSED TO A GEORGIA POWER EMPLOYEE?

A: Yes, I observed that managers considered themselves foremost as SONOPCO employees rather than Georgia Power employees. I can best explain myself by way of example. For example, after I transferred to Birmingham I continued to work directly with GPC employees in Atlanta on the rate case. I was assigned to draft a set of Performance Indicators that GPC wanted to include in the rebuttal portion of its rate case before the PSC. Georgia Power did not want the PSC to adopt Performance Indicators for its nuclear power plants, but the PSC had been pursuing this for some time and Georgia Power knew performance indicators were going to be recommended by the PSC staff for adoption by the PSC. I knew that Georgia Power wanted to be in a position to submit in its rebuttal case its version of an acceptable set of performance indicators. After I transferred to the SONOPCO project I still had responsibility for drafting alternative performance indicators for the rate case. But, I was then told by management that I now worked for the SONOPCO project and the SONOPCO project didn't want me working on

alternative performance indicators regardless of what Georgia Power wanted.

An additional example would be receiving instruction that the SONOPCO position on alternative performance standards conflicted with Mr. Dahlberg's position and that, due to this difference, I could no longer travel to Atlanta to work on alternate performance indicators. Basically, I was told that SONOPCO would not assist Georgia Power unless SONOPCO executive management approved of GPC's actions.

Another example relates to working on PSC data requests. At some point SONOPCO project management decided that SONOPCO would administrate all GPC data requests. At that point I was prohibited from working directly with Mr. Hobby or NOCA and was instructed to report to SONOPCO's administrative services non-Georgia Power managers. This definitely interfered with answering the data requests and slowed down the process.

Another example would be orders I received from SONOPCO project management that I could no longer have direct communication with Georgia Power's Atlanta offices, in particular Mr. Hobby and the Nuclear Operations Contract Administration group, and that all communications between SONOPCO and GPC's corporate offices had to go through Southern Company Services management assigned to SONOPCO project's Administrative Services group. In fact, I was told by a manager in the Administrative Services group, Mr. Merv Brown, that his role was to cut off Mr. Hobby and the Nuclear Operations Contract Administration group ("NOCA") from access to SONOPCO. Mr. Brown was initially assigned as the person everyone at the SONOPCO project had to go through when communicating or transmitting information to Georgia Power's Atlanta offices.

Another example concerns my attempt to transfer back to Georgia Power's Atlanta offices after I was transferred to the SONOPCO project. SONOPCO project management blocked my ability to transfer and instituted transfer policies that conflicted with Georgia Power policy.

Q: WERE YOU PROHIBITED FROM WORKING WITH MR. HOBBY AND NOCA ON THE SAME WORK YOU WERE DOING FOR SCS EMPLOYEES?

A: Yes. I was working on the rate case with NOCA and Mr. Hobby. I was instructed to stop all direct communication with NOCA and Mr. Hobby and to communicate only with non-GPC employees within SONOPCO's administrative services branch. I was instructed that I could only communicate with Messrs. Merv Brown and Tim Marvin, both of whom were SCS employees.

- Q: WHAT WAS THE REPORTING CHAIN WITHIN ADMINISTRATIVE SERVICES?
- A: I reported to Tim Marvin who reported to Merv Brown who reported to Ron Gilbert. Mr. Gilbert reported to the administrative services vice president, Mr. Charles McCrary.
- Q: DID HAVING TO REPORT TO ADMINISTRATIVE SERVICES IN ORDER TO COMMUNICATE WITH GEORGIA POWER'S ATLANTA OFFICE INTERFERE WITH YOUR ABILITY TO PERFORM YOUR JOB?
- A: Yes. It slowed down my ability to respond to data requests coming from the PSC, and resulted in delays in answering the requests.
- Q: DID THE PSC EVER CONSIDER ESTABLISHING A SET OF NUCLEAR PERFORMANCE INDICATORS TO MONITOR THE PERFORMANCE OF GEORGIA POWER'S NUCLEAR PLANTS?
- A: Yes. Georgia Power learned in advance of a 1989 rate case that the PSC wanted to establish nuclear performance indicators and that the PSC staff would be including nuclear performance indicators before the PSC. Georgia Power was basically told what the PSC staff's performance indicators would look like. I was aware that the PSC had made it clear to the company that nuclear performance indicators were going to be imposed and the question was what would the standards look like. As the performance engineer responsible for monitoring Georgia Power's nuclear plants since mid 1987, I was given the responsibility to draft the company's version of an acceptable performance standard.
- Q: AT SOME POINT DID YOU LEARN WHETHER OR NOT GPC'S PRESIDENT, MR. DAHLBERG, WANTED TESTIMONY ON A SUITABLE ALTERNATIVE PERFORMANCE STANDARD INCLUDED IN REBUTTAL TESTIMONY BEFORE THE PSC?
- A: Yes.
- Q: WHAT IS THE EARLIEST DATE YOU CAN VERIFY KNOWING THAT MR. DAHLBERG WANTED TO SUBMIT AN ALTERNATIVE SET OF PERFORMANCE INDICATORS TO THE PSC AND MR. MCDONALD OBJECTED?
- A: I keep a day timer and, as reflected in the July 5, 1989 entry, I met with GPC personnel in Atlanta and was informed at the meeting that Mr. McDonald and Mr. Dahlberg did not agree philosophically on whether GPC should file an alternative performance indicator to the PSC. The entry in my day timer

specifically states: "seems Dahlberg wants to go to the perf[ormance] standard and McDonald says no."

Q: WHAT DID YOU MEAN BY "MCDONALD SAYS NO"?

A: I was told that Mr. Dahlberg had decided that we were going to work on an alternative performance standard and that, regardless of that decision, Mr. McDonald later laid down the law within the SONOPCO project that we were not to participate in or help draft alternative performance indicators for inclusion in GPC's rebuttal case before the PSC.

Q: WHAT HAPPENED AFTER THIS JULY 5, 1989 MEETING?

A: I worked in GPC's Atlanta offices on an alternative performance standard. In Atlanta it was understood that Mr. Dahlberg wanted to submit an acceptable performance standard to submit to the PSC. Ed Hicks and I were required to report on what was happening in Atlanta with respect to the performance indicator issue and we submitted a memo to Merv Brown on July 21, 1989. On August 2nd Ed Hicks called to say he had to "back off" from working on alternative performance standards because he was told by his vice president, Mr. Beckham, that Mr. McDonald was upset that we were working on alternative performance indicators and that if we continued to work on them Mr. Beckham said we were being set up to "get hurt" by McDonald.

Q: WHAT HAPPENED AFTER YOUR AUGUST 2ND DISCUSSION?

A: On August 9, 1989 Mr. McDonald called a meeting of everyone in the SONOPCO project associated with working on the PSC case, including the project VPs to reiterate his position to oppose both the PSC and Mr. Dahlberg's position, and any future work on performance standards.

Q: DID YOU LEARN ABOUT A MEETING BETWEEN MR. DAHLBERG AND MR. MCDONALD RELATED TO THE PERFORMANCE INDICATOR CONTROVERSY?

A: Yes. On August 11, 1989, I was told by Merv Brown that Mr. McDonald had an intense meeting with Mr. Dahlberg over performance indicators and that Mr. Dahlberg wanted the rebuttal testimony being prepared out of SONOPCO to include a proposed alternative performance standard.

Q: DID YOU ATTEND A MEETING WITH MR. FARLEY, MR. MCDONALD AND OTHERS AFTER YOU LEARNED FROM MR. BROWN ABOUT THE "INTENSE MEETING" MR. MCDONALD HAD WITH MR. DAHLBERG?

A: Yes. Within a day or so of learning of the meeting between Mr. Dahlberg and Mr. McDonald, I attended a meeting to discuss performance standards. In attendance was Mr. Farley, Mr. McDonald, Gerald Johnson, Merv Brown, Art Domby and others.

Q: WHAT HAPPENED DURING THIS MEETING?

A: Mr. McDonald stated that the SONOPCO project was not going to work on alternative performance standards, period. And that an alternative performance standard was not going to be included in the rebuttal testimony.

Q: WHAT WAS THE REACTION?

A: Mr. Farley was the only person in the room senior to Mr. McDonald. Everyone else said nothing. Mr. Farley and Mr. McDonald talked about what the SONOPCO project's position should be and Mr. Farley said that the project should consider the matter further and that we may want to submit our version of an acceptable performance indicator.

Q: WHAT HAPPENED AFTER THAT WITH RESPECT TO PERFORMANCE INDICATOR TESTIMONY?

A: I was called into a private meeting with Mr. McDonald and told that I should not consider working on an alternative performance standard and I was instructed to work on opposing a performance standard.

Q: IF I UNDERSTAND YOUR TESTIMONY, THERE CAME A POINT WHERE YOU KNEW THAT MR. DAHLBERG'S POSITION WAS TO PREPARE REBUTTAL TESTIMONY ON AN ALTERNATIVE PERFORMANCE STANDARD AND THAT AFTER YOU KNEW THAT MR. DAHLBERG'S WANTED REBUTTAL TESTIMONY TO INCLUDE AN ALTERNATIVE PERFORMANCE INDICATOR YOU WERE INSTRUCTED BY MR. MCDONALD NOT TO PERFORM WORK ON ALTERNATIVE PERFORMANCE STANDARDS, AND THAT AT THE TIME MR. MCDONALD GAVE THIS INSTRUCTION HE WAS AWARE OF MR. DAHLBERG'S POSITION?

A: Yes, that is correct.

Q: DID YOU KNOW WHETHER MR. FARLEY REMAINED INVOLVED WITH GPC'S RATE CASE?

A: Yes. He was involved in a September 1, 1989 meeting where the testimony to be presented at the PSC hearing was finalized with respect to the information that would be presented in the rebuttal testimony.

Q: WHO ATTENDED THE SEPTEMBER 1, 1989 MEETING?

A: Mr. Farley, Mr. McDonald, Mr. McCoy, Mr. Beckham, myself and others.

Q: DID YOU PREPARE ANYTHING FOR THE SEPTEMBER 1, 1989 MEETING?

A: Yes. I was responsible for preparing an extensive briefing notebook and, at the direction of Mr. McDonald, had prepared three white papers for use by the project VPs to explain why and how to oppose performance standards. The white papers were incorporated into briefing books that I prepared. The briefing books contained all the information and material Mr. McCoy and Mr. Beckham would base their testimony on before the PSC and included the information they needed to support the prefiled rebuttal testimony that was to be filed with the PSC.

Q: DID THE BRIEFING BOOKS YOU PREPARED CONTAIN ANY INFORMATION ABOUT AN ACCEPTABLE ALTERNATIVE TO THE PERFORMANCE INDICATORS PROPOSED BY THE PSC STAFF?

A: Absolutely not. This briefing book was being prepared for Mr. McDonald and the other SONOPCO project executives and it was understood by me that I was not supposed to be working on alternative performance indicators by way of personal instruction from Mr. McDonald. I wouldn't dare include any material on alternative performance indicators in a briefing book going to Mr. McDonald and the plant vice presidents. I specifically recall that I was told on August 26, 1989 that Mr. McDonald had to approve the rebuttal testimony and that he did not want any mention of alternative performance indicators included.

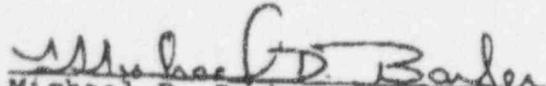
Q: WHAT OCCURRED DURING THE SEPTEMBER 1, 1989 MEETING?

A: The briefing book was reviewed in its entirety as was the testimony Mr. McCoy and Mr. Beckham were to give before the PSC. The testimony planned and rehearsed during the meeting excluded reference to an alternative performance standard.

- Q: WHAT DO YOU RECALL MR. FARLEY DOING OR SAYING IN THE SEPTEMBER 1, 1989 MEETING?
- A: Mr. Farley attended the entire meeting. He reviewed the briefing books and changed aspects of the testimony. At the end of the meeting he complemented me on the briefing book.
- Q: DID ANYTHING HAPPEN AFTER THAT CONCERNING PERFORMANCE INDICATORS?
- A: Yes. I was told that the PSC reacted very badly to our not including an alternative performance indicator in our rebuttal case. After learning this I was told that we had to immediately put together an alternative performance indicator. I believe I was forced to come in on a Sunday, September 17, 1989 to work on comparative plant information for inclusion in our performance indicator because we were under a lot of time pressure. I remember that we had to work around the clock to get it done.
- Q: DID YOU EVER LEARN OF ANY OTHER INVOLVEMENT BY MR. FARLEY WITH RESPECT TO GEORGIA POWER'S NUCLEAR PLANTS?
- A: Yes. On September 11, 1989 I received a request to update figures on Vogtle's kilowatt per hour and capital costs for Unit 2. I was told that the material was needed for Mr. Farley's and Mr. McDonald's meeting with Wall Street investment personnel. I heard that they travelled to New York on September 13, 1989 because some Wall Street analysts were "jittery" about the Vogtle Unit 2 cost and Mr. Farley was sent to calm the situation.
- Q: AS A GPC EMPLOYEE WERE YOU EVER LOANED TO NON-GPC MANAGEMENT STATIONED AT THE SONOPCO PROJECT?
- A: Yes. During my last three months, I report to Mr. Meier, the Project's Manager of Strategic Analysis. I worked on reviewing the Project's procurement procedures for all three plants, Hatch, Vogtle and Farley. I received all of my management direction from Mr. Meier.
- Q: TO WHOM DID MR. MEIER REPORT TO AT THAT TIME?
- A: I was under the impression that he was the acting Secretary of the SONOPCO project and was reporting to Mr. Farley.

Q: DID YOU HAVE ANY PRIOR INVOLVEMENT WITH MR. MEIER?

A: Yes. On May 9, 1989 I was instructed to brief Mr. Meier on the workings of the Joint Owner Subcommittee on nuclear power generation. At that point I was instructed to provide Mr. Meier with all information I was providing to the Joint Owners and that I had to henceforth submit the information we intended to provide to the Joint Owners to Mr. Meier for approval.


Michael D. Barker

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