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AUG 31 1988

Docket No. 50-424  
License No. NPF-68

Georgia Power Company  
ATTN: Mr. W. G. Hairston, III  
Senior Vice President -  
Nuclear Operations  
P. O. Box 4545  
Atlanta, GA 30302

Gentlemen:

SUBJECT: REPORT NO. 50-424/88-09

In our letter of May 10, 1988, we acknowledged receipt of your response on April 18, 1988 to our Notice of Violation issued on March 17, 1988. Our evaluation of your response to violation 88-09-02 is complete.

In your response you admitted violation 88-09-02, example one with comments. Your corrective action should include submission of a licensee event report as discussed in the enclosure.

After careful consideration of the basis for your denial of violation 88-09-02, example two, we have concluded, for the reasons presented in the enclosure to this letter, that the violation occurred as stated in the Notice of Violation. A revised response to this violation including submission of the required licensee event reports is requested. Therefore, in accordance with 10 CFR 2.201(a), please submit to this office within 30 days of the date of this letter a written statement describing steps which have been taken to correct example two and the results achieved, corrective steps which will be taken to avoid further violations, and the date when full compliance will be achieved.

The responses directed by this letter and its enclosure are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

We appreciate your cooperation in this matter.

Sincerely,

Original Signed by  
Charles W. Hehl /for

Luis A. Reyes, Director  
Division of Reactor Projects

Enclosure:  
Evaluations and Conclusions

cc w/encl: (See page 2)

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cc w/encl:

- R. P. McDonald, Executive Vice President, Nuclear Operations
- P. D. Rice, Vice President, Project Director
- C. W. Hayes, Vogtle Quality Assurance Manager
- G. Bockhold, Jr., General Manager, Nuclear Operations
- J. P. Kane, Manager, Engineering and Licensing
- J. A. Bailey, Project Licensing Manager
- B. W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge
- D. Kirkland, III, Counsel, Office of the Consumer's Utility Council
- D. Feig, Georgians Against Nuclear Energy

bcc w/encl:

- E. Reis, OGC
- J. Hopkins, NRR
- M. Sinkule, RII
- DRS, Technical Assistant
- NRC Resident Inspector
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## ENCLOSURE

### EVALUATIONS AND CONCLUSIONS

On March 17, 1988, a Notice of Violation (NOV) was issued for a violation identified during a routine NRC inspection. Georgia Power Company responded to the Notice on April 18, 1988. Violation 88-09-02, example one was admitted with comments and example two was denied. The NRC's evaluations and conclusions regarding the licensee's arguments are as follows:

#### Restatement of Violation 88-09-02

"10 CFR 50.73 requires in part, that the Licensee Event Report shall be submitted within 30 days after discovery of an event. 10 CFR 50.73(a)(2), requires, in part, a report for any operation or condition prohibited by the plant's Technical Specification:

Contrary to the above, the licensee failed to report events within 30 days of discovery as follows:

1. On July 23, 1987, an event was discovered which occurred on July 12, 1987, involving a failure to perform an Analog Channel Operational Test Surveillance on the Power Low Setpoint prior to the unit startup.
2. On June 24, 1987, an event was discovered which identified that missed surveillances were not always reported. Five missed surveillances were not reported because the subsequent surveillance was performed satisfactorily.

Failure to perform a required surveillance is a condition prohibited by the plant's Technical Specification."

#### Summary of Licensee's Response

The licensee contends that, prior to issuance of the NOV, Licensee Event Reports (LERs) were not required for missed surveillances where the surveillance was performed within the applicable limiting condition for operation (LCO) time period and operability was demonstrated as a result of the surveillance.

The licensee contends that in the Statement of Considerations for the proposed rule 10 CFR 50.73(a)(2)(i)(B) for the Licensee Event Report System contains a statement: "Failure to comply with a Surveillance Requirement need not be reported as an LER, but should be tabulated in the Monthly Operating Report." The final rule contained no clarifications in the supplementary information on the paragraph-by-paragraph interpretation of the LER rule to indicate that there had been a fundamental change in the NRC's position regarding surveillance requirements.

The GPC response notes that the Generic Letter 87-09 was the first indication that the NRC interpreted that a missed surveillance that exceeded allowable time limits was reportable.

The licensee also contends that the answers to NUREG-1022, Supplement 1, Questions 2.1. and 2.3 provided guidance, coupled with the statements of consideration for the proposed rule for not reporting missed surveillances. The answers to Question 2.1 and 2.3 state that an LER is not required unless the end of the LCO clock is reached or a problem discovered during surveillance testing is repaired before the end of the LCO clock is reached.

#### NRC Evaluation

The NRC staff has carefully reviewed the licensee's response and has concluded that the licensee did not provide any information that was not already considered in determining the significance of the violation.

It is clear by review of the licensee response to the violation that the licensee was implementing selective portions of the proposed rule. The proposed rule would have allowed reporting of these type events in the monthly operating report instead of a Licensee Event Report. When the final rule was issued the licensee failed to note the change. As stated verbally to licensee representatives, had GPC provided the information in the monthly operating report then the NRC would have considered GPC to have made a good faith effort to comply with the regulations even though the proposed regulations were not binding on the licensee. The fact remains that, the licensee did not follow the intent of the proposed rule; therefore, the argument that the proposed rule interpretation was in effect is not valid.

The specific time period that is in question was between January 16, 1987, when the operating license was issued, and June 4, 1987, when the Generic Letter was issued. The Generic Letter was issued to provide guidance for performing surveillance testing when action statements could not be met when a missed surveillance was identified. The generic letter contained a "matter of fact" statement that missed surveillances constituted a reportable event under 10 CFR 50.73(a)(2)(i)(C) because it is a condition prohibited by the plants TS.

GPC contends that the answers to NUREG-1022, Supplement 1, Question 2.1 and 2.3 provided guidance that an LER is not required unless the LCO clock is reached. GPC provided no information that the missed surveillances applied to this question.

The licensee response equates entering a LCO because of a missed surveillance not performed in the required time interval with entering a LCO for a failed surveillance which is inside the required surveillance time interval. Clearly the two are not equivalent. A surveillance that is missed and not performed during the required time interval is a condition prohibited by technical specifications and a LER is required. The condition when a failed surveillance that was being performed inside the time interval is corrected before the LCO clock expires is not reportable.

In addition, NUREG-1022, Supplement 1, Question 2.5 and corresponding answer gives guidance that Surveillance Requirements that are outside the specified time interval is a condition not allowed by the Technical Specification and an LER is required.

Furthermore, NUREG-1022, Supplement 1, Question 2.2 and corresponding answer states that time restraints are a measure of significance and that any event, operation, or condition that is prohibited by the Technical Specification is sufficiently significant to warrant an LER.

Since NUREG-1022 and Supplements were published prior to issuance of the Vogtle operating license the licensee had ample notification to preclude this violation.

GPC provided no additional information concerning the time intervals for the five missed surveillances stated in example two of the violation. The missed surveillances are discussed in paragraph five of the inspection report. These surveillances appear to be examples of exceeding the surveillance time intervals allowed by the Technical Specifications and may not be inclusive of all missed surveillances.

Conclusion:

The NRC concludes that the violation should stand as written. The response to the first example of the violation is inadequate in that the corrective action has not included the submission of the LER. The response to the second part of the violation is inadequate in all respects.