

November 26, 1997

EA-97-534

Southern Nuclear Operating Company, Inc.
ATTN: Mr. H. L. Sumner, Jr.
Vice President, Hatch Plant
Nuclear Operations
P.O. Box 1295
Birmingham, AL 35201

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION (NRC INTEGRATED INSPECTION
REPORT NOS. 50-321/96-10 AND 50-366/96-10)

Dear Mr. Sumner:

This refers to the inspection at your Hatch reactor facilities described in the subject Inspection Report issued on August 30, 1996. As a result of that inspection, a non-cited violation (NCV 50-321, 366/96-10-06) was issued for your failure to meet the requirements of 10 CFR 70.24, "Criticality Accident Requirements". The non-cited violation was for failure to have in place either a criticality monitoring system for storage and handling of new (non-irradiated) fuel or an NRC approved exemption to the requirement.

10 CFR 70.24 requires that each licensee authorized to possess more than a small amount of special nuclear material (SNM) maintain in each area in which such material is handled, used, or stored a criticality monitoring system which will energize clearly audible alarm signals if accidental criticality occurs. The purpose of 10 CFR 70.24 is to ensure that, if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action.

Most nuclear power plant licensees were granted exemptions from 10 CFR 70.24 during the construction of their plants as part of the Part 70 license issued to permit the receipt of the initial core. Generally, these exemptions were not explicitly renewed when the Part 50 operating license was issued, which contained the combined Part 50 and Part 70 authority. In August 1981, the Tennessee Valley Authority (TVA), in the course of reviewing the operating licenses for its Browns Ferry facilities, noted that the exemption to 10 CFR 70.24 that had been granted during the construction phase had not been explicitly granted in the operating license. By letters dated August 11, 1981, and August 31, 1987, TVA requested an exemption from 10 CFR 70.24. On May 11, 1988, NRC informed TVA that "the previously issued exemptions are still in effect even though the specific provisions of the Part 70 licenses were not incorporated into the Part 50 license." Notwithstanding the correspondence with TVA, the NRC has determined that, in cases where a licensee received the exemption as part of the Part 70 license issued during the construction phase, both the Part 70 and Part 50 licenses should be examined to determine the status of the exemption. The NRC view now is that unless a licensee's licensing basis specifies otherwise, an exemption expires

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with the expiration of the Part 70 license. The NRC intends to amend 10 CFR 70.24 to provide for administrative controls in lieu of criticality monitors.

Thus, as described in the inspection report, your facility was in violation of 10 CFR 70.24. Numerous other facilities have similar circumstances. The NRC has reconsidered this violation and concluded based on the information discussed above that, although a violation did exist, it is appropriate to exercise enforcement discretion for Violations Involving Special Circumstances in accordance with Section VII B.6 of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The bases for exercising this discretion are the lack of safety significance of the failure to meet 10 CFR 70.24; the failure of the NRC staff to recognize the need for an exemption during the licensing process; the prior NRC position on this matter documented in its letter of May 11, 1988, to TVA concerning the lack of a need for an exemption for the Browns Ferry plant; and finally, the NRC's intention to amend 10 CFR 70.24 through rulemaking to provide for administrative controls in lieu of criticality monitors.

Therefore, I have been authorized after consultation with the Director, Office of Enforcement, to exercise enforcement discretion and withdraw the non-cited violation.

No response to this letter is required. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room (PDR).

Sincerely,

(Original signed by
Luis A. Reyes)

Luis A. Reyes
Regional Administrator

Docket Nos.: 50-321 and 50-366
License Nos.: DPR-57 and NPF-5

cc:
J. D. Woodard
Executive Vice President
Southern Nuclear Operating Co., Inc.
P. O. Box 1295
Birmingham, AL 35201-1295

Mr. P. H. Wells
General Manager, Hatch
Southern Nuclear Operating Co., Inc.
U.S. Highway 1 North
P. O. Box 2010
Baxley, GA 31515

cc cont'd: (See Page 3)

cc: Continued
D. M. Crowe
Manager Licensing - Hatch
Southern Nuclear Operating Co., Inc.
P. O. Box 1295
Birmingham, AL 35201-1295

Ernest L. Blake, Esq.
Shaw, Pittman, Potts and Trowbridge
2300 N Street, NW
Washington, D. C. 20037

Charles H. Badger
Office of Planning and Budget
Room 610
270 Washington Street, SW
Atlanta, GA 30334

Harold Reheis, Director
Department of Natural Resources
205 Butler Street, SE, Suite 1252
Atlanta, GA 30334

Thomas Hill, Manager
Radioactive Materials Program
Department of Natural Resources
4244 International Parkway
Suite 114
Atlanta, GA 30354

Chairman
Appling County Commissioners
County Courthouse
Baxley, GA 31513

R. D. Barker
Program Manager
Fossil & Nuclear Operations
Oglethorpe Power Corporation
2100 E. Exchange Place
Tucker, GA 30085-1349

Charles A. Patrizia, Esq.
Paul, Hastings, Janofsky & Walker
10th Floor
1299 Pennsylvania Avenue
Washington, D. C. 20004-9500

cc cont'd: (See Page 4)

SNC

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cc: Continued
Steven M. Jackson
Senior Engineer - Power Supply
Municipal Electric Authority of Georgia
1470 Riveredge Parkway NW
Atlanta, GA 30328-4684

Distribution:

N. Le, NRR
J. Lieberman, OE
B. Summers, OE:EA File (2 letterhead)
P. H. Skinner, RII
R. P. Carrion, RII
W. P. Kleinsorge, RII
M. E. Ernstes, RII
PUBLIC

NRC Senior Resident Inspector
U.S. Nuclear Regulatory Commission
11030 Hatch Parkway North
Baxley, GA 31513

* SEE PREVIOUS CONCURRENCE

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cc: Continued
Steven M. Jackson
Senior Engineer - Power Supply
Municipal Electric Authority of Georgia
1470 Riveredge Parkway NW
Atlanta, GA 30328-4684

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PUBLIC

NRC Senior Resident Inspector
U.S. Nuclear Regulatory Commission
11030 Hatch Parkway North
Baxley, GA 31513

Add
J Lieberman, OE
B. Sammers, OE: EAF, k
(21trhd)

OFFICE	RII:DRP	CII:EICS							
SIGNATURE		<i>ATB</i>							
NAME	RChagar:dka	ATBoland	C. Evans						
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